

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
 . Detroit, Michigan
 . May 22, 2014
Debtor. . 10:00 a.m.
.

HEARING RE. (#4202) STATUS CONFERENCE RE. PLAN
CONFIRMATION PROCESS - FOURTH AMENDED ORDER
ESTABLISHING PROCEDURES, DEADLINES AND HEARING DATES
RELATING TO THE DEBTOR'S PLAN OF ADJUSTMENT
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Jones Day
By: BRUCE BENNETT
555 South Flower Street, Fiftieth Floor
Los Angeles, CA 90071
(213) 243-2382

Jones Day
By: HEATHER LENNOX
222 East 41st Street
New York, NY 10017
(212) 326-3837

Jones Day
By: GEOFFREY IRWIN
GREGORY SHUMAKER
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
(202) 879-3768

For Erste Ballard Spahr, LLP
Europaische By: VINCENT J. MARRIOTT, III
Pfandbrief-und 1735 Market Street, 51st Floor
Kommunalkreditbank Philadelphia, PA 19103-7599
Aktiengesellschaft (215) 864-8236
in Luxemburg, S.A.:

For National Public Sidley Austin, LLP
Finance Guarantee By: GUY NEAL
Corp.: 1501 K Street, NW
Washington, D.C. 20005
(202) 736-8041

APPEARANCES (continued):

For Assured Guaranty Municipal Corp.:	Chadbourne & Parke, LLP By: SAMUEL KOHN ROBERT SCHWINGER 30 Rockefeller Plaza New York, NY 10112 (212) 408-1060
For County of Macomb, Michigan:	Dechert, LLP By: ALLAN S. BRILLIANT 1095 Avenue of the Americas New York, NY 10036 (212) 698-3600
For County of Oakland, Michigan:	Young and Associates By: JAYE QUADROZZI 27725 Stansbury Blvd., Suite 125 Farmington Hills, MI 48334 (248) 353-8620
For Detroit Retirement Systems:	Clark Hill, PLC By: JENNIFER GREEN 500 Woodward Avenue, Suite 3500 Detroit, MI 48226 (313) 965-8274
For Ad Hoc Water and Sewer Bondholders:	Kramer Levin Naftalis & Frankel, LLP By: CRAIG SIEGEL 1177 Avenue of the Americas New York, NY 10036 (212) 715-9432
For Dexia Holdings, Inc., and Dexia Credit Local:	Allard & Fish By: DEBORAH FISH 2600 Buhl Building 535 Griswold Detroit, MI 48226 (313) 961-6141
For Deutsche Bank AG, London:	Katten Muchin Rosenman, LLP By: JOHN RAMIREZ 575 Madison Avenue New York, NY 10022-2585 (212) 940-6435
For Syncora Holdings, Ltd., Syncora Guarantee Inc., and Syncora Capital Assurance, Inc.:	Kirkland & Ellis, LLP By: STEPHEN C. HACKNEY MARC KIESELSTEIN 300 North LaSalle Chicago, IL 60654 (312) 862-2157

APPEARANCES (continued):

For Ambac Assurance Corporation:	Arent Fox, LLP By: RANDALL BRATER 1717 K Street, NW Washington, DC 20036-5342 (202) 715-8472
For the Detroit Fire Fighters Association and the Detroit Police Officers Associa- tion:	Erman, Teicher, Zucker & Freedman, P.C. By: BARBARA A. PATEK 400 Galleria Officentre, Suite 444 Southfield, MI 48034 (248) 827-4100
For U.S. Bank:	Waller Lansden Dortch & Davis, LLP By: PAUL DAVIDSON 511 Union Street, Suite 2700 Nashville, TN 37219 (615) 850-8942
For the Official Committee of Retirees:	Dentons US, LLP By: SAM J. ALBERTS 1301 K Street, NW, Suite 600, East Tower Washington, DC 20005-3364 (202) 408-7004
For Detroit Retired City Employees Association, Retired Detroit Police and Fire Fighters Associa- tion, Shirley V. Lightsey, and Donald Taylor:	Lippitt O'Keefe, PLLC By: RYAN C. PLECHA 370 East Maple Road, 3rd Floor Birmingham, MI 48009 (248) 723-6263
For Financial Guaranty Insurance Company:	Weil, Gotshal & Manges, LLP By: DANA M. KAUFMAN 767 Fifth Avenue New York, NY 10153 (212) 310-8257
For FMS Wertmanagement:	Schiff Hardin, LLP By: PAUL GREENWALT 6600 Sears Tower Chicago, IL 60606 (312) 258-5702

APPEARANCES (continued):

For David Sole: Jerome D. Goldberg, PLLC
 By: JEROME D. GOLDBERG
 2921 East Jefferson, Suite 205
 Detroit, MI 48207
 (313) 393-6001

For Three Bond-Holders of DWSD
 Ad Hoc Water and
 Sewer Bondholder
 Committee: Mintz, Levin, Cohn, Ferris, Glovsky and
 Popeo, PC
 By: WILLIAM KANNEL
 One Financial Center
 Boston, MA 02111
 (617) 348-1665

For Wilmington
 Trust Company,
 N.A.: Drinker Biddle & Reath, LLP
 By: HEATH ROSENBLAT
 1177 Avenue of the Americas, 41st Floor
 New York, NY 10036-2714
 (212) 248-3248

For UAW: Cohen, Weiss & Simon, LLP
 By: JOSHUA J. ELLISON
 330 West 42nd Street
 New York, NY 10036-6976
 (212) 356-0229

For Detroit
 Fire Fighters: Legghio & Israel, PC
 By: CHRISTOPHER LEGGHIO
 306 South Washington Ave., Suite 600
 Royal Oak, MI 48067
 (248) 398-5900

For AFSCME Local
 917 and 3308: Miller Cohen, PLC
 By: ROBERT FETTER
 600 West Lafayette Blvd., #4
 Detroit, MI 48226
 (313) 566-5900

Court Recorder: Kristel Trionfi
 United States Bankruptcy Court
 211 West Fort Street, 21st Floor
 Detroit, MI 48226-3211
 (313) 234-0068

Transcribed By: Lois Garrett
 1290 West Barnes Road
 Leslie, MI 49251
 (517) 676-5092

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1 THE CLERK: Court is in session. Please be seated.
2 Case Number 13-53846, City of Detroit, Michigan.

3 THE COURT: Let me ask counsel to put your
4 appearances on the record here this morning, please.

5 MR. NEAL: Good morning, your Honor. Guy Neal,
6 Sidley Austin, for National Public Finance Guarantee.

7 MR. HACKNEY: Your Honor, good morning. Stephen
8 Hackney and Marc Kieselstein on behalf of Syncora.

9 THE COURT: Thank you.

10 MR. MARRIOTT: Good morning, your Honor. Vince
11 Marriott, Ballard Spahr, on behalf of EEPK and affiliates.

12 MR. SCHWINGER: Good morning, your Honor. Robert
13 Schwinger from Chadbourne & Parke for Assured Financial
14 Guaranty.

15 MR. BRATER: Good morning, your Honor. Randy Brater
16 from Arent Fox on behalf of Ambac.

17 MS. PATEK: Good morning, your Honor. Barbara Patek
18 on behalf of the Detroit Fire Fighters Association and the
19 Detroit Police Officers Association, and with me this morning
20 are Christopher Legghio and Alidz Oshagan, who are co-counsel
21 for the Detroit Fire Fighters.

22 THE COURT: Thank you.

23 MR. DAVIDSON: Good morning, your Honor. Paul
24 Davidson from Waller for the U.S. Bank along with Courtney
25 Rogers.

1 THE COURT: Thank you.

2 MS. QUADROZZI: Good morning, your Honor. Jaye
3 Quadrozzi from Young & Associates. I also have Joe Fischer
4 and Bob Weisberg on behalf of Oakland County.

5 THE COURT: Thank you.

6 MS. GREEN: Good morning, your Honor. Jennifer
7 Green on behalf of the Retirement Systems for the City of
8 Detroit, and I have my colleague, Robert Gordon, and also
9 Shannon Deeby with me today.

10 MR. ALBERTS: Good morning, your Honor. Sam J.
11 Alberts from Dentons on behalf of the Official Committee of
12 Retirees.

13 MR. PLECHA: Good morning, your Honor. Ryan Plecha,
14 Lippitt O'Keefe Gornbein, on behalf of the retiree
15 association parties.

16 MS. KAUFMAN: Good morning, your Honor. Dana
17 Kaufman from Weil, Gotshal & Manges on behalf of Financial
18 Guaranty Insurance Company.

19 MS. FISH: Good morning, your Honor. Deborah Fish,
20 Allard & Fish, on behalf of Dexia Holdings, Inc., and Dexia
21 Credit Local.

22 MR. KOHN: Good morning, your Honor. Samuel Kohn of
23 Chadbourne & Parke on behalf of Assured Guaranty Municipal
24 Corp.

25 MR. GREENWALT: Good morning, your Honor. Paul

1 Greenwalt from Schiff Hardin on behalf of FMS Wertmanagement.

2 MR. GOLDBERG: Good morning, your Honor. Jerome
3 Goldberg on behalf of interested party, David Sole.

4 MR. IRWIN: Good morning, your Honor. Geoff Irwin,
5 Jones Day, on behalf of the City of Detroit along with Greg
6 Shumaker, Heather Lennox, David Heiman, and Bruce Bennett on
7 behalf of the city as well.

8 THE COURT: Okay. Thank you. First let me express
9 my appreciation and gratitude for the work of the committee,
10 the discovery and trial efficiency committee or something
11 like that. I read the papers that were filed both on behalf
12 of the objecting creditors and on behalf of the city. My
13 first interest is in hearing what ideas you can have to make
14 our discovery and trial more efficient that don't involve
15 adjourning the trial because I think that is an absolute last
16 resort, so I will open the podium to anyone who'd like to
17 address that. Oh, excuse me one second. I forgot to ask.
18 Are there people on the telephone who'd like to place an
19 appearance on the record?

20 MR. BRILLIANT: Yes, your Honor. Allan Brilliant on
21 behalf of Macomb County by and through the Macomb County
22 public works commissioner.

23 THE COURT: Thank you, sir. Who else?

24 MR. KANNEL: Good morning, your Honor. William
25 Kannel on behalf of members of the ad hoc sewer and water

1 bondholders committee, Fidelity, Franklin, and Eaton Vance.

2 MR. SIEGEL: Good morning, your Honor. This is
3 Craig Siegel of Kramer Levin on behalf of the members of the
4 ad hoc committee of the DWSD bondholders, Nuveen and
5 BlackRock.

6 MR. RAMIREZ: Good morning, your Honor. This is
7 John Ramirez, Katten Muchin, on behalf of Deutsche Bank.

8 MR. ROSENBLAT: Good morning, your Honor. Heath
9 Rosenblat of Drinker Biddle & Reath on behalf of Wilmington
10 Trust National Association.

11 MR. ELLISON: Good morning, your Honor. Josh
12 Ellison of Cohen, Weiss & Simon on behalf of the UAW.

13 THE COURT: Any others on the telephone? You may
14 proceed, sir.

15 MR. SHUMAKER: Good morning, your Honor. Greg
16 Shumaker of Jones Day for the City of Detroit. It's nice to
17 be in front of you again. Your Honor, as the papers that
18 you've reviewed reflect, the discovery and trial efficiency
19 committee has met a couple of times this week or had
20 conversations, which I think were quite productive. And
21 you've asked about how to, if you will, streamline the
22 pretrial discovery keeping the confirmation hearing date of
23 July 25th. I have some ideas to share with your Honor that
24 we have posited to the objectors, but I will say that I think
25 it's fair to say that the objectors are still focused, if you

1 will, on the issue of document production, so there has not
2 been a significant amount of attention paid to how do we make
3 this more efficient because in their views, as their papers
4 reflect, all documents must be produced prior to the
5 commencement of depositions of fact witnesses, and all fact
6 witness depositions must be concluded before expert
7 depositions are taken.

8 We do think it's critical to keep the confirmation
9 hearing date of July 25th. What we have -- what we have
10 suggested to the objectors is this. The objectors are
11 currently putting together a deposition proposal that I
12 believe they plan on sharing with the city early next week.
13 We've talked, and there was some discussion last -- at the
14 last status conference in front of you, your Honor, about
15 ways of moving forward, and one of the things that the
16 committee has agreed on is that it would be a good thing to
17 pare down the witness lists significantly and -- because
18 previously we were at about almost 200. Since last status
19 conference two parties have filed amended witness lists. One
20 is Oakland County, which has trimmed its list from 48 or 49
21 to 20, which still puts it in second place behind Syncora in
22 the number of witnesses. Syncora, I believe, has 37. And
23 Ms. Patek has filed a reduction for DPOA and DFFA from 12 to
24 6, but we have a significant number of fact witnesses. There
25 are 166 still remaining. We've proposed last time Mr.

1 Hertzberg shared with you that we think perhaps some sort of
2 limit like a three witness per objector limit would make
3 sense, perhaps if the objectors are able to make a case as to
4 why they need a fourth, that that would be part of the --
5 part of the dynamic. We think, in looking at the witness
6 lists, that would really only affect six parties who have
7 identified witnesses -- more than three witnesses. Those
8 parties are, again, Oakland County and DPOA, DFFA, the
9 Carlton Carter objectors, which relates to claims that, I
10 believe, three individuals have against the 36th District
11 Court. Those individuals have identified 15 witnesses.
12 David Sole --

13 THE COURT: Excuse me one second. Is there an
14 attorney for those parties here in court today? Would you
15 step forward, please, sir? Let me just ask you did you put
16 your appearance on the record?

17 MR. FETTER: Today?

18 THE COURT: Yes.

19 MR. FETTER: Not today.

20 THE COURT: Okay. Please go ahead and do that for
21 me.

22 MR. FETTER: Robert Fetter, Miller Cohen, on behalf
23 of AFSCME Local 917 and 3308.

24 THE COURT: All right. Thank you, sir.

25 MR. SHUMAKER: So we have Oakland County at 20,

1 DPOA, DFFA at 12, and what I'll refer to as the 36th District
2 Court objectors as at 15. David Sole has identified 14
3 witnesses plus any retiree who has filed an objection to the
4 plan, which, if you count that, would put us into I think
5 over 200, but 14 other than that category. Macomb County has
6 18. Wayne County has 15. So the three counties combined
7 have 55 witnesses identified. And FGIC has seven identified.
8 Again, we think this is very much an excessive number. What
9 we've agreed with the objectors is to put forth pared down
10 witness lists, which would be somewhat of will call, the
11 witnesses that each party absolutely thinks they have to
12 have, and, therefore, I think depositions can be scheduled
13 and proceed with them with the understanding that given
14 developments in discovery and how things progress that
15 someone is not going to say they weren't on your list that we
16 got at the end of May. And that was sort of the
17 understanding that the committee was thinking of.

18 THE COURT: I have to ask to what extent is the city
19 considering paring down its witnesses?

20 MR. SHUMAKER: Oh, it is, your Honor, and I think
21 right now we are thinking about that, and I'm thinking
22 right -- we have 37, I believe. Right now I think 20 to 24,
23 25 max, and that's subject to -- but absolutely it's
24 incumbent upon the city to do that as well. Of course, we
25 have that burden of proof thing, but that's what we're -- we

1 are trying to pare down as well, and we think that that would
2 be necessary.

3 We've proposed -- and, again, this is in terms of
4 streamlining -- that with regard to the depositions that
5 perhaps your Honor consider placing a day limit on the
6 parties, if you will, that each side -- and the number that
7 we came up with is 30 days -- that each side would get 30
8 total days of deposition. When I say "sides," I mean the
9 city and the objectors collectively would have 30 and 30.
10 You'd obviously have to have double tracking to make the
11 current June 27th deposition deadline, but that's what we've
12 proposed. Again, the objectors are considering that and have
13 not heard that. Also, I think we propose that depositions
14 should be seven hours in length, that there be a lead
15 questioner. I don't think that anyone on the objectors' side
16 has said that the lead questioner approach that was used
17 during the eligibility and the swaps hearings was anything
18 other than the best way of proceeding.

19 We also believe except for some limited exceptions
20 that -- the only 30(b)(6) deposition notices have gone out to
21 the city -- that when a witness sits, that they sit both as a
22 fact witness and as a 30(b)(6) witness. We have not
23 designated that yet, and, your Honor, we have a few hundred
24 of those to designate to, but we believe that that's more
25 workable for the witnesses. When I say "limited exceptions,"

1 I think it's probably fair to say that Mr. Orr, maybe
2 Mr. Buckfire, perhaps Mr. Malhotra, they might be where you
3 would have a full day of 30(b)(6) deposition topics. We're
4 in the midst of putting that together, but, you know, you'd
5 have a day where they were talking about their activities as
6 a fact witnesses, and then you would have a 30(b)(6)
7 deposition topic day. So that was our proposal, and that was
8 kind of what we've talked about on the deposition side of
9 things at least in terms of streamlining that, but I think
10 the objectors are still developing their position on that.

11 You saw in the papers that the objectors have
12 proposed somehow using a Section 11 conference such as is
13 specified in the manual of complex litigation. The city is
14 more than willing to participate in that obviously if your
15 Honor thinks that that would be helpful. We just have not --
16 it's been a concept that the committee has discussed, and I
17 believe that Mr. Hackney is putting together a proposal that
18 we would get next week on that as well if your Honor believes
19 that that is a good idea.

20 In terms of maintaining the trial schedule as it is,
21 the city firmly believes that the July 25th should be the
22 start date for the confirmation hearing. I mean the simple
23 reason why is that every day the City of Detroit is in
24 bankruptcy is a bad day, so, as your Honor knows, we've been
25 pushing to get to this confirmation hearing as quickly as

1 possible. But when we look out, we've also --

2 THE COURT: It's scheduled to start on the 24th.

3 MR. SHUMAKER: Is it the 24th? I'm sorry. I'm
4 sorry. The 24th, your Honor, so -- but what we've -- the
5 reason we've kind of tried to develop a concept for your
6 Honor, what you raised at the end of the conference last time
7 about the possibility of time limits for both sides such as
8 was done in eligibility and the swaps hearings is working
9 backwards from the end of September. And I'm certain your
10 Honor is going to need some time to assimilate all the
11 testimony and make his decision, so what the city is thinking
12 is that would probably take four weeks. I mean I'm not --
13 I'm sure you could do it faster than that, your Honor, but it
14 would seem like a fairly reasonable amount of time.
15 Obviously your Honor will tell us whether that is, but if
16 that is the case and the confirmation hearing starts on July
17 24th and goes until the Friday before Labor Day -- and, your
18 Honor, that's presumptuous of me because you have not set
19 aside that many, but if that were the case and you followed
20 the approach that you did with eligibility and swaps in terms
21 of time so that that's roughly six hours of court time a day
22 if you go nine, have an hour and a half break, 15-minute --
23 two 15-minute breaks, and get to -- that you roughly get into
24 the 169 to 180 time frame if you were to let us go an extra
25 hour or two on some days with some certain witnesses. I have

1 raised this with the objectors, but the city's initial
2 approach would be to say of the 180 that we should split
3 that, that the city would present its case, including
4 argument time, in 90 days -- I mean -- I'm sorry -- 90
5 hours -- 90 days -- good gracious -- and that the objectors
6 would also have 90 hours to present their case.

7 THE COURT: Well, let me ask you to pause there.
8 First, what's the magic of a confirmation order or any order,
9 not to presume the outcome, by the end of September?

10 MR. SHUMAKER: Well, I don't know if there's any
11 magic in that, your Honor, but the city has always, again,
12 tried to move this along as expeditiously as possible with
13 the understanding that the emergency manager is in place
14 until the end of September. I think that's the 28th.

15 THE COURT: Whatever the date is, what's the status
16 of Jones Day's representation of the city after Mr. Orr is no
17 longer in office?

18 MR. SHUMAKER: I believe, your Honor, that we would
19 continue to be retained, but if, say, the emergency manager
20 leaves office and no one is replaced -- not to get into the
21 possibilities, but say that that's the assumption --
22 presumably we will be representing the city through the end,
23 although then I believe City Council has the ability to vote
24 out the emergency manager, and then it would be, I believe,
25 the decision of City Council and/or the mayor. And I look

1 back to make sure I'm right, but I think that's the state of
2 play, so it would be up to them whether Jones Day would
3 continue its representation of the city. We have not had, to
4 my knowledge, discussions about going beyond that.

5 THE COURT: Okay. Anything further?

6 MR. SHUMAKER: No. There's a lot of this back and
7 forth about the documents, your Honor. I think perhaps Mr.
8 Irwin is in the thick of that. It might be best for him to
9 address that. But in terms of possibilities for
10 streamlining, those are the ideas that we had. Thank you,
11 your Honor.

12 THE COURT: Thank you. Mr. Irwin, may I hear from
13 you?

14 MR. IRWIN: Yes. May I begin with a few reports
15 that I believe I owe the Court just to tidy up some issues
16 from a week or so ago? We did, in fact, reproduce the hard
17 drives on the Court's schedule Friday of last week, and we
18 filed the attendant certification with that. We have, I
19 believe, all hard drives accounted for in terms of the return
20 to Jones Day or our vendor with two exceptions. I believe
21 one of the COP holders, FMS, who just filed their
22 certification yesterday, represented to us because we
23 contacted them that it was on its way to us. I think we even
24 have a FedEx tracking number, so I'm not --

25 THE COURT: Okay.

1 MR. IRWIN: -- worried about that. We also
2 contacted Mr. Goldberg because he had not returned his drive
3 yet to us, but he assured us that he had not even opened it
4 and that it would be coming back to us very shortly, so I'm
5 not concerned about that.

6 We also, as the Court hopefully saw, filed the
7 affidavit of Ms. Hale on Monday, which had the attendant
8 attachments to it. As we discussed in court last week, it
9 also had the index of the document production along the lines
10 of what we agreed to with objectors off and on the record, so
11 I think we're compliant with what the expectations were of us
12 from last week.

13 On documents, on the city's document production, the
14 city believes that it is in substantial compliance with the
15 requests now and at a minimum on Friday -- well, tomorrow, at
16 this point when we will make a supplemental production, which
17 is something that I've discussed with a number of objectors
18 in my many, many meet and confers that I've been having over
19 the last week or so, but I thought I would just highlight for
20 the Court the categories of the documents that would be
21 produced. Some of these we've talked about. Three very
22 important substantial categories of documents that relate to
23 and, in our view, is a preview and an advance production on
24 expert issues that really go to the core of the case, the
25 Ernst & Young ten- and forty-year projections that, again,

1 are at the core of the -- the objections at the core of the
2 plan, that has taken some time because these are very large
3 spreadsheets, and as the Court may be aware, Ernst & Young is
4 being asked for the same information from the Phoenix Group
5 and Ms. Kopacz. We're trying to do all of this together and
6 trying to prioritize these things. Ernst & Young has worked
7 with counsel very closely in connection with a number of
8 mediations and has run sensitivities and has baked certain
9 analyses into these projections, and they stay with this very
10 large document over time, and it requires someone with a
11 great deal of care to go through these tables and pull out
12 and remove and expunge any mediation-related information or
13 projections that are baked into these tables. We believe
14 that we will be in receipt of those in native format because
15 I've talked to certain objectors about how to get this
16 information to them sooner. Could we paste values in the
17 Excel spreadsheet that doesn't require links that could be
18 broken and disrupt the performance of the -- the mechanics of
19 the schedule? We think we're at a point today where with a
20 very quick turnaround and folding into the production we're
21 planning for tomorrow native versions stripped of mediation
22 information that will get objectors a very, very large amount
23 of information that they really want because, again, everyone
24 is asking for it. It's what the expert testimony is going to
25 be all about. And, again, it will allow them to see how all

1 of these things came together. And by the way, your Honor, a
2 lot of the work that's done by other city advisors,
3 restructuring work from the Conway MacKenzie folks, actuarial
4 analysis from the Milliman house, those all roll up into this
5 model, so maybe not at the Nth level of detail, but they're
6 all baked into this so you can see how the whole thing works,
7 and that's part of what we're providing tomorrow.

8 We are also providing the Milliman and Conway
9 MacKenzie separate components of that. If you want to see it
10 to the Nth level, they'll be getting that separately. That
11 also be going out tomorrow on the Conway MacKenzie side on
12 the restructuring projections and analyses that are in the
13 plan we'll be producing, and there's an attachment in the
14 plan. It's a 70-page attachment with all the department
15 heads and how all this reinvestment is going to work, but
16 they're only two-page summaries right now, and what we will
17 be providing is all of the support behind those two-page
18 summaries. And, again, it's our view that this is an
19 acceleration of what is truly expert discovery, but it's in
20 the plan. We want them to have it. We want to take our time
21 with it and make sure it's done correctly, and that will be
22 produced tomorrow. There are a number of other categories of
23 documents or cats and dogs, if you will, that -- some of
24 which have come up in connection with my meet and confers
25 with people. I've made this commitment, and I can assure you

1 many, many people have taken me up on it, to contact me and
2 ask me to help them where we have somehow identified a range
3 where the responsive documents exist, but they're having
4 trouble finding something, and we've been directing them to
5 in some cases pinpoint sites in our production where those
6 documents are. Where those conversations have resulted in a,
7 gee, we're just not sure it's in there, we think we did, but
8 we can't know for sure, or if we just missed something, if
9 there's a document -- an update document or a document that
10 they want us to go further back in time, we've done that, and
11 so we folded those documents in some categories into this
12 production that we're making tomorrow. I've discussed some
13 of these with counsel. A couple of them I wanted to also
14 just bring to your attention. We have been providing
15 documents to Phoenix at their request. We've been sharing
16 those documents with them. We've been logging those -- the
17 documents that have been shared, and to date so that we're
18 current with what we've provided, that will be a part of
19 tomorrow's production as well. That's included so that the
20 creditors have that information as well.

21 The one I specifically wanted to bring to the
22 Court's attention is an issue that came up late last week.
23 We learned for the first time -- we counsel learned for the
24 first time that the mayor has actually asked his department
25 heads to provide certain reports to him assessing the plan.

1 I haven't seen the written request myself. If we have it,
2 we've included it in there. One of the -- one of the
3 responding department heads included it in the preview of the
4 answer, which we have. The request was essentially to
5 provide a report regarding the ability to meet revenue and
6 expense projections in the plan of adjustment; number two, an
7 evaluation of financial projections for restructuring
8 initiatives; and, number three, the feasibility of
9 restructuring initiatives timeline. So they were asked to
10 report to him on all these subjects. We learned of it on
11 Friday. It was confirmed for us on Monday of this week. We
12 actually had a previously scheduled discovery committee call
13 on Tuesday morning. We alerted the objectors of the
14 existence of these reports. They were literally just being
15 created. We've collected them now, and that will also be a
16 part of tomorrow's production. And to the extent more are
17 generated or created, we will, of course, produce those.

18 So that, your Honor, takes us through where the city
19 stands as of tomorrow, and, again, the city's view is -- and
20 I remain committed to work with anyone who needs additional
21 assistance to locate documents within the city's production
22 or to go back if there's a -- if there's an earlier in time
23 document or a more current version of a document that they
24 need, we've been doing just that.

25 So the question really is from the city's

1 perspective what is left, what is remaining after that. And
2 as I see it, it really comes down to a couple of buckets. I
3 have reported to objectors -- and I know I saw it in their
4 report to the Court yesterday -- that we did get a late batch
5 of documents from Ernst & Young, from their collection. It
6 just didn't come to us in time to fold into the original
7 production. It's about 2,000 documents. I don't know how
8 many of those will be responsive, but we have put them in the
9 queue, and they are being reviewed right now. And, in fact,
10 we have a document review team that is going to be working
11 through this holiday weekend to get everything done so that
12 we get it out to them as quickly as possible. It seems like
13 a next week -- seems like next week is perfectly manageable
14 in that regard.

15 The only other thing that is definitely coming next
16 week -- well, there's one other bucket we sort of need to
17 talk about, but Ernst & Young is also preparing -- and this
18 is something I think I previewed with the Court and I've
19 certainly talked to objectors about -- something more
20 ambitious than simply the native version of the ten- and
21 forty-year projections that they're working on. They refer
22 to it as the binder. I think it's going to be a lot more --
23 it's going to have a lot more data in it. It's going to have
24 a lot more -- there are going to be documents that also go to
25 some of the assumptions that they used in connection with

1 this, and that will be produced. It's supposed to come to us
2 today or tomorrow. We need to review it for privilege and
3 other reasons, and then we'll get it out to objectors next
4 week, so that will be even more fulsome than what we're
5 providing in connection with tomorrow's native version of the
6 Excel spreadsheets themselves.

7 Where that then leaves us primarily is the impasse
8 that we seem to be having with the DWSD objectors and the
9 impact it's having on our ability to produce documents and
10 whether this is going to be something that derails the
11 process. We provided to the Court last night in our
12 submission an exchange that we've been having as we try to
13 work through issues with the DWSD objectors, but their --
14 both their indications of their witness lists and what they
15 are asking the city to do as a further cooperation or
16 compliance with their discovery requests is becoming
17 incredibly burdensome and unmanageable on the city. We laid
18 out in our -- I think if your Honor hasn't read, we've
19 certainly laid out in our e-mail that we provided to them
20 earlier this week where I had requested that they tell us
21 what they really need. Give me the categories of what you
22 really need in this case, and we will help you find it or
23 we'll go get it. That exercise yielded two e-mails from --
24 one from the counties, one from the DWSD parties, where they
25 laid it out, and we responded by doing just that, in many

1 cases showing them exactly where the information in our
2 existing production is with very precise pinpoint sites.
3 Yes, when we were responding to these requests, we went to
4 the DWSD. We went to the chief operating officer and relied
5 on him and his staff to go out and get us the responsive
6 information to these requests, and that's in the Hale
7 declaration. It's laid out pretty clearly. And it worked.
8 We produced almost all of the financial information that
9 they're asking for that seems to us relevant to their
10 objections, which is odd because the objections seem almost
11 entirely legal in nature, we have provided, and we laid that
12 out for them. And I stand ready to continue to help identify
13 documents in the production that would be relevant to their
14 issues or that they're simply having difficulty finding. The
15 real issue is they are insisting that we search multiple
16 custodians in a drain your computer, full-scale, ESI document
17 sweep that will cost the city potentially, if you think about
18 who they're asking us to do -- they're actually asking us to
19 search 20 custodians at the DWSD, again, drain their
20 computers, run these search terms, and produce the documents.
21 That would be incredibly costly and burdensome to the city
22 and could be an excuse to disrupt the schedule, quite
23 frankly, and we have real questions about what the relevance
24 of this is. We have made what we feel is an appropriate
25 offer to this group, which is to take the top three

1 individuals at the DWSD, which includes the director, the
2 COO, and the CFO, through which all of these underlying -- to
3 which all of these underlying people report or through which
4 any relevant information would roll up and search those on
5 their search terms, and we've reported to them -- we've
6 reported to them, your Honor, that just to take those three
7 individuals, those three individuals and run their search
8 terms yields about 35,000 documents, and that will take time
9 and money to review. Now, we did not -- we are not waiting
10 for them to agree to that. Based on the tone and the tenor
11 of our meet and confers, it doesn't seem like there's going
12 to be agreement to this, but that will take us into next
13 week. And at the end of next week, we could produce those
14 documents, but that's going to be 35,000 documents. It's
15 going to cost the city between 40 and \$50,000 to do that,
16 just to look for e-mails that might relate to some of their
17 issues when we have pointed them to the core financial
18 information that we think is relevant here. But if we need
19 to do that, we will do that. They are insisting that we take
20 three to twenty, so instead of 35,000 documents, it's, you
21 know, six or seven times that many documents. We could be
22 talking about a quarter of a million dollars to search e-
23 mails, and there's limited bandwidth in our -- we have
24 limited ability to process this information with very limited
25 returns at issue here, so, again, we are not waiting. We did

1 not limit our initial search and production to DWSD proper.
2 In fact, we hear this on calls all the time. We see it in
3 these papers. Well, there's only 1,200 documents from DWSD
4 proper. That is from the DWSD custodians, but we searched
5 DWSD across all of our city custodians. I ran a very simple
6 search the other day. I searched for DWSD, you know, in our
7 document production, and that returned 2,200 hits, which are
8 associated with 3,700 documents. And if you search water
9 within three of sewer, that returns 2,500 hits and almost
10 5,000 documents. So we feel like we have done a very robust
11 DWSD-related search in connection -- and that are responsive
12 to these requests. If we need to search these additional
13 custodians, again, at the very top of DWSD, we can do that.
14 It'll be expensive, but we can do it by the end of next week,
15 but there has been no negotiation in this regard, and there
16 is no relenting in terms of how much further we need to go.
17 And we are concerned that the DWSD group is getting out front
18 in an effort to disrupt the schedule.

19 THE COURT: All right. On the objectors' side, I
20 guess we should deal with this issue of documents first, and
21 then we'll deal with the issue of how to make discovery and
22 trial more efficient. So who'd like to address the issue of
23 documents, especially DWSD documents?

24 MR. NEAL: Good morning again. Guy Neal, Sidley
25 Austin, for National Public Finance Guarantee. National

1 itself insures about \$1.8 billion of water and sewer bonds,
2 but I don't rise for National. I rise for the committee.
3 And just by way of two-minute background, as your Honor may
4 recall, the committee formed in the midst of the fire drill
5 last Thursday, metaphor intended, but to give you -- just to
6 give you a sense of who we are, I've broken it down to six
7 groups, although you probably could expand it, but group one
8 is the DWSD bondholders, bond insurers, and indenture
9 trustee. Group two would be Oakland, Macomb, and Wayne
10 Counties. Group three, COPs holders, FGIC, and Syncora.
11 Group four, LTGOs insured largely by Ambac Assurance
12 Corporation. Group five, the Retirement Systems and the
13 Official Committee. And group six would be labor. I'm
14 calling them labor. Maybe they're also called union, but
15 that's the Detroit Police Officers Association and the
16 Detroit Fire Fighters Association. Six groups, within them
17 close to about two dozen objectors, two dozen law firms, many
18 more lawyers than two dozen law firms. If you exclude the
19 retirees and you exclude labor, these are the holders and
20 insurers of roughly \$8.4 billion worth of debt, 6 billion
21 water-sewer special revenue debt, about 1.4 billion in
22 general fund debt.

23 Now, what have we done in the past five days? This
24 group of objectors, we've met, we've conferred, we've
25 coordinated. And as Mr Shumaker accurately described, we had

1 two conference calls with the city in an effort to address
2 the five issues we laid out in our statement. And I know you
3 read the statement. I'm not going to go through each one.
4 And we filed in that statement -- excluding exhibits, it's 11
5 pages, which in and of itself is a feat to have this
6 committee with a dozen law firms do 11 pages, and we'll take
7 our victories where we can.

8 Document production. It's all driven by document
9 production. You have heard, you will hear two things, one
10 from the city we've substantially completed, and from the
11 objectors, while you've made arguably a substantial
12 production, you have not substantially completed. The city
13 said that -- said to us in meet and confers that by next week
14 we'll get the Milliman, E&Y and Conway MacKenzie documents.
15 It's encouraging to hear that it accelerated that process and
16 that we're going to get the hard drives of those materials
17 tomorrow. That's encouraging. There's still additional
18 documents that are going to roll in next week, and other
19 colleagues on the committee that are not part of the DWSD can
20 address the issues relating to this production, which would
21 be on the -- excuse me, your Honor -- it would be on the 23rd
22 of May. Remember, the production deadline was May 6th. And
23 remember when some of us were baby lawyers, you tended to get
24 Bankers Boxes of real documents that you go through. These
25 are electronic information on hard drives. It'll take the

1 holiday weekend to process. It'll take all next week to go
2 through the documents.

3 Let me turn to DWSD because that's an interest in
4 particular of my client and my constituency, again, \$6
5 billion worth of debt as to which they are trying to impair
6 in a variety of ways, lower the interest rate to what they
7 deem to be a market rate. That raises intensive fact
8 determinations of credit quality, credit rating, CAPEX
9 expenditure, governance, rate payer ability, all of those
10 that the ratings agencies such as Moody's, Standard & Poor's,
11 Fitch Ratings, all evaluate based on a published set of
12 criteria, fact-intensive inquiries. They're not legal.
13 There's also the desire of the city to pull out from the
14 systems a closed loop system of special revenue debt, pull
15 out about \$430 million. If that money comes out, that's a
16 violation of state law, federal law, we maintain, as well as
17 our bond documents, but even if they're allowed to do it as a
18 matter of law, question is can they take it out senior to our
19 debt. Is it part of operations and maintenance? Fact-
20 intensive inquiry. Does it come out of the bottom of the
21 waterfall?

22 THE COURT: How is that fact-intensive?

23 MR. NEAL: Well, it's fact-intensive in a variety of
24 ways. First, is the number correct. Is the 428 million that
25 they maintain largely consists of unfunded actuarial

1 liability of the water and sewerage system, is that number
2 correctly calculated? And that's based on census data of
3 DWSD employees, many of whom we maintain are on the DWSD
4 payroll, but they're not DWSD employees, so that number
5 becomes fact-intensive. I'm going to keep this at a high
6 level. I have colleagues here that can get as granular and
7 as into the weeds of water, sewer production as this Court
8 would like. I sense from your smile we'll keep it at a high
9 level. There is -- as you know, your Honor, there's a
10 hearing next Wednesday. You set next Wednesday as a hearing
11 to address document review issues because even though we all
12 got a hard drive -- and this is the -- excuse the
13 pejorative -- this is the cookie cutter hard drive. The same
14 production everyone got on May 7th or May 6th they got again
15 last week on May 16th. As to DWSD, these documents are not
16 responsive. We established that at the May 12th hearing and
17 the May 15th hearing, not responsive to the DWSD parties'
18 discovery requests.

19 Here's what we know from the production, and Mr.
20 Irwin confirmed as much when he stood up here, that of the
21 DWSD custodian, 1,142 pages, not documents, pages, and no ESI
22 search of anybody to date -- they're still working through
23 that -- and an estimated 35 to 40,000 documents to the extent
24 they do an ESI search of the top three management, the
25 director, the CFO, chief operating officer. So when they

1 filed last night a statement, paragraph 5, page 3 of their
2 statement, that they've substantially completed the DWSD
3 document production -- try to do this professionally and
4 delicately -- that's not an accurate representation. They've
5 produced 1,142 pages. There may be -- there are 40,000 pages
6 that are coming to us next week, 40,000 coming to us that
7 would be responsive to our prioritized requests, simple math.
8 We have standing here today, May 23rd, two percent of what
9 the city maintains to be -- city maintains and we dispute --
10 we can get into that next week -- two percent of what the
11 city maintains is responsive to the DWSD document requests,
12 which, again, 6 billion of the 7.48 billion at issue. So we
13 have worked with the city, and we intend to -- Mr. Irwin has
14 been great. He's been available at every time. We have had
15 dialogues. We have had disagreements. But from last Monday,
16 May 12th's, hearing when they were ordered to produce
17 documents going back to 2009, when they were ordered to
18 produce additional documents as they relate to the GLWA
19 transaction or any transaction that they're considering, and
20 when we -- when he, when Mr. Irwin called me on May 14th,
21 last Wednesday, one week ago, and said, "Let me help you.
22 Please prioritize your requests. You've served many. The
23 county has served an equal number. Work together.
24 Prioritize your request. Give us a list of custodians," we
25 did so within five hours, got an e-mail from me identifying

1 the information we need. You can read through it, but I'm
2 not going to take the Court's time today. To date here we
3 are, May 22nd. I don't have the documents that I
4 prioritized. I don't have the searches of the custodians who
5 have information.

6 Now, we hear from the city that they've asked for
7 documents and they searched for documents of, in addition to
8 one DWSD custodian, other city witnesses, Conway MacKenzie,
9 Miller Buckfire, people who don't work at DWSD nor would they
10 have the documents we're looking for, and they've produced
11 3,000 documents. Well, be it 1,400 or be it 3,000, take the
12 city at its word on every representation. We're still
13 talking two to ten percent at most of the production that we
14 have to date. And, again, to the extent you want, we can go
15 deeper, deeper, deeper, deeper. Your Honor, we're here all
16 day, and I don't want to take up the broader issues that
17 concern more than just DWSD. People have been very patient
18 with me on this committee because I've been very, of course,
19 DWSD-centric.

20 So what does this mean to me? And really it's not
21 just to DWSD. It's to Mr. Hackney. It's to Mr. Marriott,
22 Mr. Perez. What does this all mean? This means that if you
23 assume -- and it's aggressive. It's very aggressive. If you
24 assume that by Monday, June 2nd, we will have substantial
25 completion of a document production, if you assume that date

1 just ten days away, less than ten days away, that leaves you,
2 your Honor -- that leaves you with 25 days at which to -- I'm
3 merging into scheduling if that's okay, your Honor. That
4 leaves you with 25 days total, 19 workdays, to set out to
5 accomplish a deposition of the city's 37 witnesses, which may
6 be reduced. There are additional witnesses outside the
7 city's witness lists that we need to depose, director of
8 DWSD, the CFO, people who have information on capital
9 expenditure and capital improvement. That determines the
10 interest rate, market interest rate, in 19 workdays let alone
11 the city's desire to take our depositions, which, if it's
12 three per objector, I'm going to assume 12 objectors just for
13 sake of argument. That's an additional 36. Your Honor,
14 you're at about the 75 witness number for depositions in a
15 19-day window.

16 Your Honor, I'd like to think that I am good, that I
17 can do that, but I'm not that good. Maybe Mr. Hackney could
18 do that. I can't do that. And I'm being asked at the same
19 time not just to take, defend -- well, lets back up.

20 THE COURT: Don't shake your head. It was a
21 compliment.

22 MR. NEAL: So let me back up because I'd have to
23 finish review of documents, prepare for depositions, take
24 depositions, defend depositions, and under the city's
25 proposal put together three to four -- myself three to four

1 expert witnesses. Everyone else has one to three, let's just
2 assume as a starting point, of expert witnesses while all of
3 this is ongoing. I would submit to you, your Honor, that if
4 we had sodium pentothal, that even the Jones Day lawyers
5 could not accomplish that end. If they found themselves in a
6 similar position -- and they are -- they're the lone objector
7 as a law firm for a client in Stockton. They are prosecuting
8 right now. That case is in the process of confirmation,
9 closing argument on June 4th. They've had a longer period of
10 time representing one client, the last remaining objector,
11 holding a \$35 million claim in that case, had a longer period
12 of time to conduct fact discovery and to conduct expert
13 discovery and to prepare for trial. One objector, \$35
14 million claim. Doesn't equate to the two dozen here with
15 \$7.4 billion.

16 So, your Honor, and I say this not for purposes of
17 show, not for purposes of spite or sport, no desire on my
18 part to continue this any longer than it needs to be
19 continued. I think everyone in this courtroom agrees on
20 that, but to be frank, I cannot adequately represent my
21 client under the schedule as currently constructed given
22 where we are with the document production. Going back to the
23 name of this committee, discovery and trial efficiency
24 committee, Mr. Shumaker is right. We're stuck on discovery
25 but not even deposition discovery. We're working out a

1 protocol. We're stuck on document discovery. And we told
2 Mr. Shumaker and Mr. Irwin, in all honesty, that we haven't
3 gotten to the trial part. We are more than happy to discuss
4 an efficient way to proceed with trial and to divide up time
5 appropriately. We think the objectors can better divide up
6 their allocated time better than the city can for us or,
7 frankly, your Honor, even you can for us, but we understand
8 the limitations. We're at document discovery. We're not at
9 fact depositions.

10 So what we submitted to your Honor really didn't
11 have much secret sauce or special formula to it last night in
12 the schedule. We simply presumed that document production
13 would be substantially complete. That remains an assumption.
14 That remains aggressive, that it would be substantially
15 complete by June 2nd, and we rolled out the dates
16 accordingly. I'm going to give you just one example of what
17 we did. We didn't try to get too creative. Under the
18 existing order, the fourth amended scheduling order today, it
19 provides 52 days between May 6th, production deadline, and
20 the June 27 fact deposition cutoff, 52 days, itself
21 aggressive. Under the proposed order, from June 2nd to July
22 18th, which is the date that we plugged in -- let me pause.
23 We arrived at July 18th because last week Mr. Hertzberg said
24 July 15th would be an appropriate extension. We added three
25 days. If you twist our arms, we could go back to July 15th.

1 So June 2nd to July 18th, that's 46 days already. Already we
2 end up losing six days of a time period at which no time can
3 be squandered, no time can be lost, so, hence, it was a three
4 and a half bump-out of each of the deadlines, and why not
5 just move one date? Well, every iteration of the scheduling
6 order had the same progression, had the same sequencing of
7 events, written discovery followed by fact depositions
8 followed by expert depositions followed by supplemental
9 objections and pretrial briefing and then followed by the
10 trial. Jones Day is saying we're being a little too rigid in
11 trying to adhere to that progression, although, in my own
12 experience of 20 years, that's how every trial is staged. If
13 you remember, you know, the Trident commercial that four out
14 of five dentists agree, I think you would -- if you asked any
15 litigator if that's how -- how would you stage a trial, they
16 would say that's how you would stage a trial, at least four
17 out of five, and the fifth one you wouldn't want as your
18 lawyer. That's how you -- that's how you have to do it. I
19 understand Mr. Hertzberg's comments and his instincts -- I
20 mean he has more experience than I do -- of trying to move
21 out the fact date to July 15th, but we can't have expert
22 reports without having the documents, without having the
23 depositions, and then providing a short window of time for
24 the experts to complete.

25 THE COURT: I need you to rewind a bit.

1 MR. NEAL: Yes.

2 THE COURT: Mr. Irwin suggested that you can get
3 substantially the documents you need from his searches of the
4 three top employees of the DSWD. What is your position on
5 that as opposed to the other 17 or however many other
6 employees there are?

7 MR. NEAL: Yes, very good. The e-mail I sent him
8 had --

9 THE COURT: Excuse me for one second.

10 MR. NEAL: Yes.

11 THE COURT: Go ahead, sir.

12 MR. NEAL: Yes. The e-mail that I sent Mr. Irwin at
13 his request last week identified 14 custodians, not --

14 THE COURT: Feel free to pause if you need to.

15 MR. NEAL: I will continue.

16 THE COURT: Okay.

17 MR. NEAL: The e-mail I sent last week had 14
18 custodians. Maybe the counties sent an additional request
19 that added -- was additive and made it 20. I don't know. My
20 list had 14, three of which they've agreed to search. Let me
21 tell you how we arrived at the number and why we think it's
22 appropriate. In the first instance, Ms. Hale filed an
23 affidavit describing how they went about trying to collect
24 DWSD documents, and I want to give the short form version of
25 that. They went to their chief operating and compliance

1 officer and general counsel, a gentleman by the name of
2 William Wolfson, and they asked him, "Please, Mr. Wolfson,
3 will you endeavor to collect documents that relate to DWSD
4 issues?" And I'm not saying he did so in response to our
5 discovery requests -- I think there's an ambiguity -- but
6 just DWSD issues. Those are in the plan. Again, not
7 directly responsive to our discovery. He turned around and
8 collected from 11 custodians. Those 11 custodians sent back
9 to Mr. Wolfson 1,142 pages. To put that in perspective, Ms.
10 Hale's affidavit that she filed earlier this week is about
11 900 pages, just her affidavit alone. So on issues relating
12 to \$6 billion worth of debt where substantial impairment is
13 being imposed by the plan, we have to date 1,142 pages, which
14 comprise 61 documents. We've looked at them. They're not
15 meaningful. They're not material. So we asked that there be
16 ESI searches as to additional custodians, those as to whom he
17 collected from but only got back -- I don't know -- I can't
18 do the math in my head -- a hundred pages per person if that.
19 We are asking for a search based with search terms. If you
20 give me a moment, your Honor, I want to go back to Mr.
21 Irwin's estimate of the cost, which, regrettably, I don't
22 have in my notes, but, again, if you put -- everything
23 becomes relative, of course. The burden on them to produce
24 is relative to the issue before the Court. What's before the
25 Court, as I explained, substantial impairment of \$6 billion

1 worth of debt. The cost to search those documents is de
2 minimis relative to the amounts that are at issue, and I
3 would submit to your Honor if this were a case in federal
4 court in which \$6 billion --

5 THE COURT: Well, hold on. Hold on.

6 MR. NEAL: Yes.

7 THE COURT: Does the city propose not to pay any of
8 that \$6 billion?

9 MR. NEAL: No.

10 THE COURT: All right. So it's not like \$6 billion
11 is at stake here. You're talking about --

12 MR. NEAL: Well, let me --

13 THE COURT: You're talking about the interest rate
14 and --

15 MR. NEAL: Two issue -- two main -- well, three main
16 economic issues, yes.

17 THE COURT: And call protection.

18 MR. NEAL: Right. Interest rate, call protection,
19 and the pension allocation.

20 THE COURT: Oh, okay, but I wouldn't want it
21 reported that the city is going to impair \$6 billion worth of
22 your debt. It's not.

23 MR. NEAL: It's not a \$6 billion loss. You are
24 absolutely correct. I don't have the --

25 THE COURT: What is the dollar value you contend is

1 at stake with the city's plan vis-a-vis your clients?

2 MR. NEAL: I would ask your Honor not to hold me to
3 it, but by rough math --

4 THE COURT: It's an estimate.

5 MR. NEAL: Rough math, it's about \$800 million.

6 THE COURT: Okay.

7 MR. NEAL: It's real money.

8 THE COURT: It's still a big number, but --

9 MR. NEAL: Nonetheless, it's a very big number.

10 THE COURT: -- it's not six billion. Okay.

11 MR. NEAL: Six billion just sounds larger, your
12 Honor, but I understand. Fair enough.

13 THE COURT: Well, so would 60, but --

14 MR. NEAL: Fair enough. The cost. Again, I don't
15 know how I missed this in Mr. Irwin's presentation. It is de
16 minimis. If it takes some additional time beyond -- here's a
17 legitimate concern by the city. If it takes some additional
18 time to do the ESI search of more than three custodians, I
19 can't speak for everybody, but National won't come back and
20 say, "Wow, we lost another week. Let's go back to your
21 Honor, and let's ask for an additional week extension." I
22 understand some documents come in later than others. That's
23 why we have rolling productions. But these documents are
24 essential, and why are they essential? Because as a general
25 policy matter, the city wants to put forward the usual

1 suspects of Kevyn Orr, of Charles Moore, of Gaurav Malhotra,
2 of Ken Buckfire.

3 THE COURT: Okay. Let's not call them suspects.

4 MR. NEAL: I'm sorry. That's a colloquial term. I
5 don't mean to use it in its -- apologies. I'll strike that,
6 take that back.

7 THE COURT: Thank you.

8 MR. NEAL: But they want to put forward consultants
9 of the city both in response to Rule 30(b)(6) designations
10 where you ask give me the person most knowledgeable on CAPEX
11 needs of the water and sewerage systems. We anticipate they
12 will put forward Ken Buckfire or Charles Moore, not someone
13 who is, we submit, the person most knowledgeable. So we ask
14 that the people who are most knowledgeable -- we have their
15 titles -- we can go over them -- have their documents
16 searched.

17 THE COURT: And that's how many?

18 MR. NEAL: On my list -- and I defer to Jaye
19 Quadrozzi, counsel for Oakland, or Allan Brilliant, who's on
20 the phone, counsel for Macomb -- that would be 14 total.
21 We'd be happy to work with the city to try to narrow that
22 list down to ten, but I'm speaking solely for National. I
23 don't have the authority of Ms. Quadrozzi or Mr. Brilliant or
24 others on the team. So that is the basis -- and Mr. Hackney
25 will speak after me, I'm sure, on non-DWSD document issues,

1 but that is the basis for the proposed fifth amended
2 scheduling order, to keep it in line with the fourth amended
3 scheduling order, to allow for a reasonable time for parties
4 to challenge the city's case in chief and to present their
5 own case.

6 I'm going to close with just two comments, your
7 Honor. One, we call -- and I think we used the terminology
8 in our submission -- the witness list rationalization, and
9 then there's the discovery -- I give credit to Mr. Hackney or
10 I -- that's Mr. Hackney -- and then the deposition protocol,
11 which is my term of art, so I can be prejudiced with that.
12 That process is ongoing. Again, I described the six groups
13 at the outset. These are daily conference calls. These are
14 daily e-mails with members of the group to bring the number
15 down. We've made substantial progress, DWSD working across
16 with Syncora and the COPs, to get to a rational number.
17 There may only be five to ten core witnesses that people
18 really care about. I'm not saying there's only going to be
19 five to ten depositions that we -- five to ten are the core
20 that both COPs, Syncora, DWSD, county, that they'll all want,
21 hence the need for no artificial seven-hour limitation. But
22 we are working on that, and Mr. Shumaker stated it
23 accurately. We promise to get them something early next
24 week. It will allow this to get done in a period, but not in
25 a period between June 2nd and June 27th. That is not

1 workable from our perspective. So unless your Honor has
2 anything else for me, I know Mr. Hackney wants to address one
3 issue that I've not addressed, and that's the effective use
4 of pretrial conferences going forward, but I know he has
5 other issues that he wants to address as they relate in
6 specific to the general fund creditors, so thank you.

7 THE COURT: Thank you, sir.

8 MR. HACKNEY: Your Honor, good morning. Stephen
9 Hackney on behalf of Syncora. I think this is a big hearing.
10 We're kind of at a crossroads, and I was wondering if I could
11 give you my thoughts on why I do believe we are at the last
12 resort of having to move the trial date. I'll tell you
13 reasons why we don't want to move the trial date either, you
14 know. When you're opposing a plan that you don't think is
15 confirmable, you want to get it unconfirmed as fast as you
16 can so that we can set about the work of building a plan that
17 works, so we want to get there fast as well, but it has to be
18 in a fair fashion, so I do want to address that. I'd like to
19 give you some insight into the document issues that may hit
20 your desk on Wednesday. We're still reviewing things. I'd
21 like to close with some thoughts about how we can move
22 forward in a way that is efficient and will hopefully serve
23 your aims of even if the trial date does have to move, if you
24 ever reach that conclusion, we can make sure that that's the
25 last move or get there in the most efficient way possible.

1 I will tell you, your Honor, I don't know if you
2 know I missed some of the end of the swap trial because my
3 wife and I had a little girl. We actually have three girls,
4 and they are four and a half and two and a half and four
5 months, and the irony of it is that when you have three small
6 children, the things that happen at nighttime are like out of
7 "A Midsummer Night's Dream," like you end up sleeping in
8 different beds and people kick you in the head all night
9 until you wake up and ask why is someone kicking me in the
10 head, and so the -- one of the ironies of the Detroit case is
11 that when I come here, even though the hearings are stressful
12 and they involve a lot of prep, it's often typically a place
13 where I catch up on my sleep. Last night I did not catch up
14 on my sleep. I will tell you I woke up at three o'clock this
15 morning. I was wide awake. I could not go back to sleep,
16 and it's because I was really upset about the way this last
17 week went down with this committee we formed. It was a
18 missed opportunity this last week, I think, and I'm
19 frustrated about it because if we work together, we can put
20 on a good trial for you that will elicit the truth for you so
21 that you can decide what the best answer is, but if we don't
22 do that, we're going to make hash of it, and I feel like the
23 city thinks that this is all over but for the shoutin', so
24 they're saying this trial is a formality. Judge Rhodes has
25 his thing on feasibility, and we've got to satisfy him about

1 feasibility, but all the rest of it is done. I do not
2 believe that we're having a show trial in this case. I don't
3 believe after three decades on the bench in the largest
4 Chapter 9 case that this trial isn't what it purports to be,
5 which is a real trial. And if we are going to have a real
6 trial in the largest Chapter 9 case in American history with
7 some of the most complicated issues, not Stockton where they
8 got it down to like one creditor who wasn't happy with the
9 way they were being treated and, by the way, raised many of
10 the objections that we're raising, but many different
11 creditors and many different issues, any one of which, in my
12 world as a commercial litigator, could in and of itself be a
13 multi-year litigation, no lie, it can't come as a surprise to
14 us that there are complicated issues to work through and
15 complex issues to work through on discovery. Now, the city
16 was the one -- when you put out there, "Here's what I think
17 about the schedule. What do you all think about the
18 schedule? Give me your comments," the city more or less put
19 their hand up and said, "We like your schedule." They
20 advocated for an extremely compressed discovery and trial
21 schedule. And remember those are my words, but they're also
22 the words from Ms. Hale's affidavit where she describes the
23 extraordinary measures she had to go through to address the
24 extreme nature of the schedule, so this is something where
25 the lawyers on both sides will tell you this is a -- this is

1 a very accelerated schedule. And I've given you my views
2 before about why we didn't think it wouldn't work, and I'm
3 not going to go into them again, but what I can tell you for
4 sure is that if it was going to work, the city needed to be
5 perfect in complying with its obligations under that
6 schedule, and, unfortunately -- and that's because they are
7 the gatekeeper for the information. We need the information
8 to take the depositions. Our experts need the information.
9 I will get into what information it is that we need and why
10 we need it in a moment.

11 The city, as you know, has been far from perfect in
12 complying with its discovery obligations. It granted an
13 extension to itself of the initial date in late April. Its
14 May 6 production of documents was inefficient, improper, and
15 unfair. It was plagued by the clawback problem. Even as we
16 sit here today 16 days past the date the city was to be
17 completed with their production, and Mr. Irwin says, "You
18 know, these creditors are of the view that you got to
19 complete the document production before we get into
20 depositions," that's what your order says, and we aren't even
21 demanding that. We're looking for substantial completeness.
22 These are real lawyers in the room that are practical and
23 understand complete, okay, but substantially complete, yes.
24 Even as we sit here today 16 days past the date to be
25 complete, we do not have documents supporting the city's

1 forecasts, absolutely essential information relating to best
2 interest, relating to feasibility, relating to what's in the
3 plan. We do not have documents supporting the city's
4 calculation of the OPEB claims. We're still waiting to
5 understand, okay, we have the DIA documents, but, city, what
6 art documents were in your possession that led you to make
7 the decision around the grand bargain. We are waiting on
8 other documents that relate to things, for example, the
9 city's historical experience with the Revised Judicature Act,
10 which is critical for claimants like the COP holders and the
11 retirees because that is the basis for their remedy outside
12 of bankruptcy. Even Ms. Hale concedes in the affidavit that
13 she filed last night that her work is ongoing even with what
14 they filed this week, ongoing. Those are her words. These
15 documents go to the most important issues in the case, unfair
16 discrimination, fair and equitable, best interest of
17 creditors.

18 Now, from the Hale affidavit we learned the
19 following additional facts that I will not front-run our
20 hearing next Wednesday, but I want to say that they are of
21 concern to me. The city, Jones Day proper, the city, the
22 Jones Day law firm, only searched five city custodians, five,
23 Kevyn Orr; Ms. Fox, who's his assistant, who I believe came
24 on the scene in the fourth quarter of 2013; the CFO, who I
25 think only came on the scene in the first quarter of 2014;

1 Ms. Mays, the assistant to Mr. Orr; and Mayor Duggan. I am
2 going to maintain an open mind. We have people reviewing the
3 documents right now. I wonder whether they even got the
4 documents back to January 1, 2013, relating to things like
5 what are the asset valuations of many of the city's assets
6 over \$2 million. That's clearly relevant to plan
7 confirmation. What are the delinquent taxes and the city's
8 ability to collect taxes on a historical basis, on a go
9 forward basis? What does the assessor's office say about
10 that? Why isn't it collecting documents -- taxes? How much
11 has it not collected? What does it think it can do? There
12 will be relevant evidence in there that will matter to you,
13 things like feasibility and best interests. What does the
14 planning department think about the long-term vision of the
15 city? How does it fit into the restructuring and
16 reinvestment initiatives? These aren't reaches. This isn't
17 us torturing the city just for the fun of it. These are
18 material documents that not only do I want, but I will bet
19 you that Ms. Kopacz is going to want them as well. These are
20 real documents or real effort to grasp this.

21 We learned that the extreme nature of the schedule
22 led the city to make its collection of documents from city
23 employees prior to receiving our document requests and even
24 to begin reviewing the documents prior to receiving our
25 requests without going back to rereview them based on our

1 requests. And by the way, our requests were served early.
2 Many of the people -- of the folks in this room, their
3 document requests came in even after mine. We served ours
4 earlier to give the city extra time.

5 We learned that the city did apply that January 1,
6 2013, limitation across all document categories. I would say
7 that's not necessarily consistent with what I had previously
8 understood. And we understand now that the city made this
9 critical decision to look at categories of information and
10 say, well, that relates -- that also relates to expert
11 discovery, so we'll just hold it back until then, for
12 example, on the forecasts or on Milliman. This is in Ms.
13 Hale's report.

14 Now, these documents are clearly discoverable now
15 because they relate to things that are in the plan that we
16 are going to be fighting about at confirmation. The moment
17 they made that decision, your Honor, to say, well, that can
18 wait for expert discovery, they crippled the schedule because
19 our experts under the schedule have to produce if it's an
20 affirmative report -- and I think we should try and get some
21 clarity around this -- on June 24th. If it's a rebuttal
22 report, they have to do it on July 1st. The moment the city
23 made the decision to hold back the underlying substantive
24 documents that were going into things that were in the plan
25 but that the city deemed would be the subject of expert

1 testimony, they crippled our expert's ability to make the
2 type of simultaneous production of expert reports that your
3 order envisioned. Now, I don't think Ms. Hale did that on
4 purpose like -- I just met her today. I think -- I'm not
5 saying she was with evil intent, but I am saying the effect
6 of it was you hamstrung our ability to have our experts make
7 even the expedited production. Your Honor, the city's
8 actions are crippling our ability to get this case ready for
9 you.

10 Now, the city's experts are working away. They have
11 full and unfettered access to this information. Many of mine
12 are waiting anxiously on the document production and seeing
13 the sand run out of the clock in terms of when their reports
14 are due. And when the city says that, you know -- you know,
15 there is an acknowledgement by Mr. Hertzberg that the
16 deadline for fact discovery needs to cut off, needs to be
17 moved back, that's just the reality of what's going on, and
18 there is a reality of the implications of that for the
19 remainder of the schedule. And part of my frustration of why
20 I woke up so early this morning was that the DTEC, which is
21 what we call the committee that you made up -- I think that
22 you have a knack for acronyms because that's a good acronym
23 there, but Mr. Neal I would say has spearheaded much of that.
24 All of the people in this room have been working hard on it,
25 and I will tell you that I'm actually -- I'm impressed over

1 and over again. On the swap trial we did a lot of
2 coordination, and I'm always impressed to see the way that
3 creditors work together on things. You know, we're always
4 portrayed as this bag of cats, you know, that are just
5 fighting each other, and you take one out and settle with
6 them, and then you put the bag back wherever you hold bags of
7 cats. And what happened here is these creditors -- it's
8 impressive to watch them work together. There are
9 intelligent people on the phone. There are strong
10 personalities on the phone. They have views. They want to
11 do it this way. They want to do it this way. People trim
12 their sales to try and do things like put a document in front
13 of you where we say here are things that we think could be
14 helpful, and it's kind of a vision sometimes of what the
15 bankruptcy could be if we were able to achieve a consensual
16 plan. What was frustrating was as we were doing conference
17 calls and working together, all of a sudden the city was
18 backing off the position even that Mr. Hertzberg had taken a
19 week ago. Now they were saying, "What are you talking about?
20 We have already substantially produced the documents. Is
21 there some confusion about that? And, no, we don't need to
22 delay the fact discovery cutoff. It should just stay the
23 same. I don't know what good old Mr. Hertzberg was talking
24 about. Let's just keep it the same. And we cannot move that
25 trial." And so not only have we lost all the time up until

1 that point, I feel like we lost the last week because I
2 thought that we were going to get together and rationalize
3 the schedule and make it work, and instead the city just
4 pivoted on us, and that was frustrating to me given all the
5 time I spent on the phone with people like Mr. Neal and
6 others trying to begin the difficult process of getting
7 everyone together to work together in the practical way that
8 you need us to. If we are going to craft a schedule that
9 will deliver to you a trial that is worthy of this
10 proceeding, I believe it needs to be substance based, your
11 Honor, and what I mean by that is we should drive the city
12 and, to the extent it will benefit the Court, drive the
13 creditors, too, to engage in the types of practical back and
14 forth that takes the pleadings down to the reality of
15 painting a picture of what the trial will look like, painting
16 a picture of what the evidence will look like. I'm talking
17 about questions like how does the city propose to justify the
18 discrimination between pensioners and COP holders? Is the
19 city assuming that the Court will rule in its favor on
20 invalidity? That's not consistent with the plan, but is that
21 part of its strategy? If the Court finds that there are fact
22 issues that preclude the Court from finding COP invalidity as
23 a matter of law, are we going to try the fact issues of COP
24 invalidity in connection with the plan? That is not what the
25 plan currently says, but that's actually a real question to

1 ask the city in light of recent events. If the city's
2 rationale is not that the COPs are invalid but that there are
3 other bases to treat the two classes differently, what are
4 the bases, and what is the evidence that will go into
5 supporting that rationale? How does the city propose to
6 prove the merits of the grand bargain? I could go on and on.
7 These are real questions. I think sometimes you say things
8 that are true at the right level of generality, so you'll
9 say, "Come on, Mr. Hackney, we know what this case is about,"
10 and we do at a certain level of generality, but when you're
11 taking it down to the level of how much time should those
12 guys get, how many depositions do they need, how should we
13 structure this, you have to go from the level of generality
14 of generally understanding unfair discrimination is in play,
15 best interest is in play, feasibility is in play, to the
16 practical evidence-based conversation that we have about how
17 are you going to put this together, what are you seeing, what
18 parts of it are expert testimony, what parts are not. You
19 know, that is very consistent with what the manual on complex
20 litigation says, and I have never been part of a more
21 complicated litigation than this one. This is the -- this is
22 what they wrote the manual for. And so even if you engage in
23 this type of substantive-based interaction, cards on the
24 table, it's not like you get done with that status conference
25 and say, "Oh, okay, we solved how deps will happen and how

1 much time and who will sit and what trial is going to be
2 like." I'm not saying that it will. What it does is it
3 forces the lawyers to engage. It forces the lawyers to
4 engage with each other and with the Court. And what I think
5 will grow from that are things that we can use to rationalize
6 discovery, and I will give you an example of one idea that I
7 have not had the chance to talk about with my DTEC
8 colleagues, and my strong preference is not to ad lib from
9 the podium over much, but this is one idea I will give. If
10 you have a conversation with the people -- with the different
11 attorneys, especially the city, how are you going to prove
12 this, lets understand what the key disputed issues are going
13 to be, and let's understand how the city intends to prove it
14 up, what I could see doing is something that's kind of novel
15 and I've never seen done. I don't even know if it's within
16 the rules, but I could see the Court saying, "I, the Court,
17 am going to actually drive the 30(b)(6) topics onto these key
18 issues." And to the extent the party has a unique issue
19 that, you know, they want a separate 30(b)(6) on, I'll get --
20 under good cause I'll give that to them, but instead of
21 having the chaos of everyone crafting their 30(b)(6) topics
22 and the city having to rationalize it and figure it out,
23 there could be a better way to get there in terms of making
24 sure that there's a good linkage between where we take the
25 30(b)(6) deps, how much of it we take, and how it fits onto

1 what we're going to be litigating at trial. That's an
2 example of the way the substantive exchange that I'm talking
3 about can facilitate that, which, in turn, I believe can
4 facilitate other depositions because I think that there's a
5 little bit of a steam valve effect, which is if you've gotten
6 a good 30(b)(6) dep on unfair discrimination, I think it
7 reduces the pressure somewhat on you to put it into all of
8 your dep outlines and take a bunch of depositions outside of
9 the 30(b)(6). It won't eliminate the other depositions. I'm
10 not saying it's a panacea. I'm saying it's the type of
11 practical-based solution that we could do to get a handle on
12 things.

13 A second idea is one that Mr. Neal alluded to, which
14 is after we rationalize the witness list, which I think we
15 should do just to paint the targets better of who will likely
16 need to be deposed or who could be deposed, what we should do
17 then is I think we should tell people file something that
18 says who you want to depose because this may be like one of
19 those false conflict-type problems that you learn about in
20 law school where it's -- you know, there's a choice of law
21 problem in two states. You don't know which one applies, and
22 it turns out the states don't really have a substantive
23 conflict. You may see a sorting effect that goes on like Mr.
24 Neal alluded to, which is DWSD has got a focus over here,
25 COPs and COPs insurers have a focus over here, maybe LTGO

1 nearer to them, and the Venn diagram of what's problematic in
2 the middle where they overlap, we both want Orr, we both want
3 Moore, we both want Malhotra, et cetera. Well, then we
4 simplify the problem of, okay, good, so it turns out there's
5 about five to seven of these guys that are in the middle of
6 the Venn diagram. What if we -- and I, as the Court, have a
7 better sense of how these guys fit into -- men and women fit
8 into the issues that are going to be litigated, and then it
9 can be, okay, we'll have a DWSD day and a non-DWSD day, or
10 it's going to be 12 hours total, six and six, or whatever,
11 but what we can't do is we can't keep having these
12 conversations where, you know, Mr. Shumaker gets up and says,
13 "I think Syncora should get three witnesses." What's the
14 basis for that? We don't have the type of substantive level
15 exchanges yet. They have a lot about my case because we
16 filed an objection. We don't even have their replies yet,
17 and we're already talking about limiting witnesses, limiting
18 time. I don't think we're at the point, your Honor, where we
19 can start to do that and have it be anything other than
20 arbitrary because we just -- we haven't engaged enough on the
21 substance, and this is the view that we expressed with
22 respect to the Manual for Complex Litigation.

23 The last thing that I wanted to say, your Honor,
24 is -- and I also want to echo what Mr. Neal said about Mr.
25 Irwin. I spent time with Mr. Irwin. The information that

1 we're getting tomorrow, that facilitates discovery. That was
2 very helpful, like I appreciate that. I spoke with Ms. Hale
3 today on an issue that we got the static out of the line,
4 didn't have to come in here and bother you with it. I
5 appreciate that. I don't want to just dun the city
6 immmercilessly for no point whatsoever, and I've told both
7 of -- or Mr. Irwin on several occasions that I don't hold
8 what's happening against him. I know that he's doing the
9 best that he can. It's just no one could perform under this
10 schedule. It's not something that you can do.

11 But I will say going forward is if we're going to
12 get there where we are going to work through this complexity
13 both in terms of the scale of the issues that are in play but
14 also in terms of getting these parties to all work together
15 so that we minimize the number of depositions, which is also
16 an ask of the city, so they want to go fast, but they want it
17 to be super orderly as well -- if we are going to do that,
18 there's going to have to be compromise, and the compromise
19 isn't just from the creditors. It is also from the city.
20 And that's, candidly, what bankruptcy is about. And you know
21 this better than I do. It is about compromise. But
22 discovery is often about important compromises as well.
23 Schedules are about compromise. And if you think about what
24 the city is saying today, the city is coming in and saying we
25 can have what everybody concedes was a false start to our

1 document production, not produce the documents that support
2 the forecasts that are in the plan, not search for documents
3 that go back prior to Jan. 1, 2013, not provide actuarial
4 information relating to the central valuations in the case of
5 pension and OPEB, and produce a ton of mediation material
6 inadvertently that requires everybody to send the hard drives
7 back and injects delay on its own. And, your Honor, we, the
8 city, think that the result of all that is that you should
9 punish the creditors by shrinking the amount of time their
10 experts have with the information and holding the schedule.
11 That's not compromise. You asked Mr. Irwin, "What's magical
12 about the September 30 date? And he said, "Well, there isn't
13 really anything magical about it. It's part of the state
14 settlement with the city, sure." But you and I have been
15 here before where I feel like we have these guns that are
16 being pointed at our head or the city is pointing a gun to
17 its own head and saying, "Stop me or I'll shoot." And they
18 can't create a back-end deadline and then say, "Okay. Well,
19 we'll give Judge Rhodes a month to write the opinion, and
20 that means that we can only have this many trial days, and
21 that's if we start on this day, so we have to jam it all in
22 before -- between now and then because we have to get done by
23 September 30 and have September 30 not be a magical day."
24 You said earlier that you wanted the just and speedy and
25 efficient resolution of this case. Your Honor, in my

1 considered opinion, I say this -- I say this with great
2 respect -- right now all we have is the speed. We're not
3 tracking on justice. I cannot prepare for this trial under
4 this schedule and fairly represent my clients, but I don't
5 think we're actually tracking on efficiency. If we want to
6 go fast going forward, maybe not as fast as what the city
7 says, but fast by your standard, I think we need to go slow
8 at the beginning to get it organized, and that's a substance-
9 based exchange about what we're litigating and then a lot of
10 interaction between the lawyers to figure out how to try that
11 case up to you. Thank you very much, your Honor.

12 THE COURT: Thank you.

13 MR. SCHWINGER: Good morning, your Honor. Robert
14 Schwinger from Chadbourne & Parke for Assured Guaranty. I
15 just want to amplify a few points from Mr. Neal's excellent
16 presentation about some of the document issues. I don't want
17 to get in front of what we're going to do next week, but I
18 think it's very important for the Court to have a real
19 appreciation of the reality of what the production was
20 because the affidavit that we received from the city
21 essentially tried to paint in a tone that sounded very
22 reasonable a production that was unreasonable and
23 nonresponsive in larger measure in terms of what we have
24 gotten to date, and it's very clear that much more material
25 is going to be coming. With luck we'll have it by June 2nd,

1 but, in any event, we're talking three and a half weeks off
2 the original schedule, which assumes the city would be
3 producing in full on May 6th.

4 As Mr. Neal mentioned, the city collected documents
5 from within the DWSD. They went to the chief operating
6 officer, told him what they wanted to collect, and then he
7 went to, they said, 11 other individuals, so 12 individuals
8 in total. And according to the index that the city provided
9 at your Honor's request, we have a total of 1,142 pages from
10 the -- within DWSD from 12 custodians. That's 95 pages per
11 person. I measured it in my office yesterday. It's a half
12 an inch. They did a document production from -- in a case of
13 the dimension of this size involving potentially hundreds of
14 millions of dollars of impairment of DWSD-related bonds of an
15 organization of the both financial and physical size and
16 complexity of the DWSD, they went to 12 people, got a half-
17 inch of paper from each one of them and said, "Hey, look at
18 that. My job is done." I would submit to you if one of my
19 associates said that for document production --

20 THE COURT: How many inches do you need?

21 MR. SCHWINGER: It would be helpful if the inches
22 were responsive, and that will take me to my next point
23 because I don't measure it in terms --

24 THE COURT: All right. Let's talk about that rather
25 than inches.

1 MR. SCHWINGER: Sure. But our point is as a rule of
2 thumb from the practical experience of litigators, to get a
3 production of that dimension in a case of this dimension,
4 that's a red flag that something is off.

5 In terms of what we have and what we need, there was
6 this mention of this exchange. We had the prioritization of
7 various document requests, and on the request that we
8 prioritize from the DWSD group, there were 38 that were
9 prioritized. There were 26 of them that the city has said,
10 "We're still working on them." That's just on the priority
11 list. That's a lot of production that we don't have at the
12 moment. The city sent us an e-mail purporting to show
13 various documents in the production where we could find some
14 of this material. The original 1142 pages amounted to 61
15 documents. What they pointed us to in their e-mail was
16 another 40 documents, none of which, by the way, came out of
17 the DWSD production, so essentially apparently nothing that
18 we asked for apparently, according to the city, was in the
19 files of the DWSD.

20 THE COURT: Okay. I need you to focus on what you
21 need that you don't have.

22 MR. SCHWINGER: Sure. Well, basically what we need
23 that we don't have is our prioritization list. To give you
24 an example --

25 THE COURT: Okay.

1 MR. SCHWINGER: -- of the things that we are -- we
2 have prioritized, what the city has said, "We're still
3 working on it. We're going to get you more material." These
4 are DWSD historical financial information, pension allocation
5 information.

6 THE COURT: Okay. I'm going to amend my request.
7 If the city has said they're going to give it to you, let's
8 trust that for the moment.

9 MR. SCHWINGER: Okay. And I'm not denying that they
10 will.

11 THE COURT: What I need you to focus on is -- excuse
12 me -- what you need that you don't have that the city has
13 refused or is unwilling to provide.

14 MR. SCHWINGER: Okay. That is not -- I'm not saying
15 that the city is refusing, although they've made some general
16 comments in their filing last night that many of our requests
17 are unreasonable, but ultimately --

18 THE COURT: Is the answer to my question there's
19 nothing?

20 MR. SCHWINGER: The answer to it -- the answer to
21 your request is given what the city said in their written
22 responses and objections, they purport to be willing to give
23 us this material. The question is when.

24 THE COURT: Right.

25 MR. SCHWINGER: The question here is timing. We had

1 our hearing on May 12th about objections, and essentially
2 nothing was really -- we dealt with those issues. There are
3 materials that the Court ordered the city to provide on May
4 12th. We've yet to get any of them. And there are
5 additional -- and there are materials --

6 THE COURT: So your issue is timing?

7 MR. SCHWINGER: The issue here is timing. That's
8 correct. I don't think there is a substantive roadblock, the
9 city saying, "We refuse to give you material on certain
10 topics." The answer is that we haven't gotten it to date,
11 and also there's an issue of timing. And while the city may
12 be, in theory, willing to give us documents on the subject,
13 whether their actions are, in fact, the kind of robust --

14 THE COURT: Right. Well, we'll have to wait and
15 test that; right?

16 MR. SCHWINGER: Excuse me.

17 THE COURT: We'll have to wait and test that when it
18 comes in.

19 MR. SCHWINGER: Well, that's true to some extent,
20 your Honor, but there are certain things that we see. For
21 example, I go back to the size of the production is at least
22 one indication. Another one is with the number of
23 custodians.

24 THE COURT: It won't do -- I forewarn you it won't
25 do for you to come back in and say they only gave us "X"

1 number of inches of documents.

2 MR. SCHWINGER: I understand that, your Honor. The
3 point is we've -- they sent back, for example, to say what --
4 you know, here's a document on this subject, and they've
5 given us more -- in total, your Honor, they've pointed us to
6 40 documents in their entire -- in their production thus far.
7 And this is simply -- and we can go through, you know,
8 particular topics, but this is not going to be -- the fact
9 that you have one or two documents you can point to in a
10 production that's on a certain subject doesn't mean you've
11 given a full production of the information of the sort that,
12 for example, the experts need to look at. They've mentioned
13 that, for example, one of the things that are forthcoming is
14 these binders from Ernst & Young and Milliman which will
15 contain all their detailed forecasts and so on. Well, what
16 about the back-up against which those forecasts can be
17 tested? That's not going to be in those expert reports.
18 That's going to be in the raw documents that you get from the
19 document production. They've said that they will -- they've
20 agreed that they're going to do an ESI search for three
21 custodians, who are the three top individuals, the director,
22 the CFO, and the COO. Now, what you're not going to find in
23 their e-mail is some low-level person, for example, running a
24 set of projections and then one of his colleagues say --

25 THE COURT: You're anticipating issues.

1 MR. SCHWINGER: I am anticipating --

2 THE COURT: It's premature for that.

3 MR. SCHWINGER: I agree, your Honor, it's going to
4 be premature till May 28th. The point is, your Honor, is
5 that I don't want the Court to be taking it at face value
6 that everything is going fine with the city's production. We
7 have a lot of grave concerns. There are a lot of red flags
8 flying at the moment, and we certainly -- from what we've
9 seen from the city to date in terms of particularization
10 where they point us to, "Oh, here's two or three documents on
11 a subject," that doesn't come -- there's no way that that
12 represents the responsive universe. It just simply defies
13 all common litigation experience, and that's the concern that
14 we are raising here. I mean at a minimum, for example, your
15 Honor, if they want to collect paper documents from within
16 DWSD and the chief operating officer said, "I need to go to
17 12 people," why wouldn't you think you need to go to those 12
18 people to get e-mail? I mean logic says that if you have --
19 if those people have relevant documents for one set of
20 purposes, they're going to have it for another. That's just
21 a big gap that's staring us in the face.

22 So right now we have -- and just in terms of the
23 volume, as I said, you know, we've talked about the number of
24 pages. The city is saying that they're going to give us
25 35,000 more documents plus the Milliman binders, the Ernst &

1 Young binders, the Conway MacKenzie binders. We obviously
2 right now have a very, very small fraction of what the
3 ultimate total will be, and that's -- once again, goes to the
4 issue of the timing. When are we really going to have enough
5 of the responsive universe that is practical to proceed in
6 discovery according to the current schedule versus having to
7 adjust to the reality of getting the vast majority of what
8 the city is going to produce on DWSD by June 2nd, three and a
9 half weeks later than what the schedule contemplated, and
10 where the city's reaction is that, "Well, you know, you'll
11 just have to squeeze your discovery to fit that because we're
12 not going to budge on our end?"

13 Just to wrap up on this point, we were here last --
14 we were here last week, your Honor. The city has been
15 ordered to produce additional material. We're still waiting
16 for it. We haven't seen it to date. They didn't produce on
17 time. Under these circumstances, I mean the city has to
18 grapple with the consequences of its own actions, and we're
19 not faulting them or saying it's intentional, but the
20 realities here have to be dealt with, and that's the concern
21 we have, and that's what motivates the request here about the
22 schedule adjustment that we've been talking about. Thank
23 you.

24 THE COURT: All right. Anybody else want to add to
25 instead of repeat what's already been said?

1 MS. QUADROZZI: Your Honor, I have a couple of
2 specific points with respect to the DWSD production, and I
3 will certainly not repeat any of the comments or arguments,
4 although I share in it with the fellow members of the
5 committee, but in terms of specifics -- and this may be a
6 little more granular than your Honor wants, so you stop me if
7 this is. There are two groups of documents that Oakland
8 requested as to which we are very concerned that they are not
9 producing them, and they are not of the group that we believe
10 that they are going to produce, the 35,000 or the 40,000
11 additional, and they are these. Oakland sought documents
12 relating to the condition of the DWSD system, needed repairs,
13 capital expenditures. These were, among others, Oakland
14 document requests ten and twelve. To both of these, the city
15 responded that they would produce documents in their document
16 requests. They objected on the general objections, but they
17 said they'll produce existing responsive documents. In the
18 materials with Ms. Hale's affidavit, they identified in
19 response to those that they searched from Sanjay Marken,
20 Conway MacKenzie, and some unidentified person that says
21 Department of Water. With the exception of the ten-year
22 plan, there are no documents in anything that we have seen
23 that is responsive to these requests. There's a really
24 significant question here from Oakland as to whether or not
25 the CIP needs of DWSD on which the city's plan is relying are

1 sufficient to allow for the continued operation of DWSD in
2 terms of its ability to meet its contracts with its
3 customers, Oakland being one of them. We've seen
4 documents -- and Macomb references one in its objections --
5 that suggest that the numbers relied on by the city may be as
6 low as by a third, so we're entitled to look at DWSD
7 documents that talk about that issue. What the city has said
8 in response is what they are now doing is they will look at
9 the director, the CFO, and the COO. I will note that the COO
10 is also the general counsel, so those are the three files
11 that they've said that they will search. What we would like
12 is for there to be a more fulsome search of people who are
13 likely to have these documents. I don't believe that we
14 should just be forced to look at the cleaned up documents
15 that may make their way into the director's or the general
16 counsel's files. Rather, we're interested in the documents
17 that the plant manager at the wastewater treatment plant
18 might have or the people who are in charge of ensuring that
19 the pipes that service the system are replaced on a regular
20 annual basis and what guidelines that they're using to do
21 that. Those are the types of documents that we want. When
22 Mr. Irwin reached out -- and he actually reached out to
23 Macomb, and then Macomb reached out to me, and said, "Listen,
24 we want to get you guys what you want, and we recognize we
25 haven't done a full search. Can you identify some custodians

1 for us, maybe help us with some search terms?" So we did
2 that, and we provided a list, and I'm sorry. I don't have
3 the e-mail here, so I don't remember the number that I
4 listed. It might -- maybe it was 12. Maybe it was 14. But
5 I did so with an eye to the people that would have those
6 particular types of documents, manager of the wastewater
7 treatment plant, wanted to get somebody on the water side.
8 When I hear the city now saying, "Oh, my God, they've given
9 this ridiculous number," when I look at the materials that
10 Ms. Hale provided, 11 of the custodians that I identified as
11 might be having meaningfully these documents, the city had Mr
12 Wolfson go and talk to anyway, so it's clear that both of us
13 recognize these are the people with knowledge. It's simply
14 not sufficient for there to be just the search of those high-
15 level documents. We think that we're entitled to something
16 deeper than that.

17 The second issue that relates to this, your Honor,
18 is one having to do with rates, and Oakland sought documents
19 relating to customer rates, rate classes, historical and
20 future projections about rates. There are a whole list of
21 them, and I won't go through them all, but they are roughly
22 Oakland requests 4, 5, 6, 8, 28, and 49. And they sought
23 these documents, your Honor, because rates and their
24 historical relation to revenues of DWSD is important in the
25 analysis of whether or not a DWSD that is stripped of

1 hundreds of millions of dollars over the next ten years can
2 continue to provide the services that it needs. For all of
3 these requests, again, the city in the responses that they
4 filed said, "We will produce them." In response to the
5 requests, again, the city searched a VP at Miller Buckfire,
6 Conway MacKenzie, and this unidentified Department of Water
7 files. Well, respectively, the consultants don't have these
8 documents. These documents reside at DWSD. They haven't
9 provided any of these documents. In response to Request
10 Numbers 28 and 49, which seek documents about the rates and
11 the agreements with municipalities about the rates, the city
12 said it doesn't have any responsive documents. Well, that
13 doesn't make any sense. Of course they have responsive
14 documents. I have those documents or my client does from
15 Oakland. It doesn't -- maybe the consultants don't have the
16 documents, but certainly DWSD has them. They're relevant to
17 the future viability of DWSD. We know, for example, that the
18 city in its projections, we believe, has failed to account
19 for the loss of revenue to the system that will be coming in
20 the future because of what we know is happening with Flint
21 and Genesee County. We're certainly entitled to take a look
22 at the documents to see if during the course of the
23 discussions with respect to that there are different
24 predictions about how they will account for losses of rates.
25 Those are just two specific categories that I intended to go

1 through just to help illustrate the particular reasons that
2 we don't believe that it is appropriate to limit those
3 custodians and the searches to just those three, your Honor.

4 THE COURT: I want to thank you for cutting your
5 witness list in half. I'm going to ask you to do it again,
6 and I may ask you to do it again.

7 MS. QUADROZZI: May I ask a question on that, your
8 Honor? One of the things -- and I think I've seen it in
9 materials, but I will say that it is possible -- there has
10 been so many e-mails -- that I might have missed this. If
11 the city has listed on its list a witness that we would like
12 to have a chance to question, are we free to not include it
13 on ours but yet not be prejudiced if in the future they take
14 it off theirs?

15 THE COURT: You should list the witnesses you want
16 to call.

17 MS. QUADROZZI: Fair enough, your Honor.

18 THE COURT: All right. Who else?

19 MR. BRILLIANT: Your Honor, this is Allan Brilliant
20 on behalf of, you know, Macomb County by and through its --

21 THE COURT: Mr. Brilliant, I'm going to ask you not
22 to go through the same kind of complaints about the city that
23 I just heard from Oakland County. There is a time and a
24 place to do that, but it's not today. All right?

25 MR. BRILLIANT: Yes, your Honor. I just want to

1 do -- just talk briefly. We join in in all of the -- you
2 know, the common --

3 THE COURT: Okay. And there's no need for the "me,
4 too" either.

5 MR. BRILLIANT: Okay, your Honor, you know. Thank
6 you. And I think the -- your Honor, I guess the one thing I
7 would say is, you know, in connection with the city's
8 presentation dealing with the -- you know, the issue of, you
9 know, the number of witnesses, you know, they mentioned, you
10 know, a list of all the various parties and how many
11 witnesses are on their list, and they mentioned, for
12 instance, you know, that Macomb had 18. Of the 18 witnesses
13 we had on our list, you know, nine of them are witnesses that
14 are on the city's list, and the reason we put them on our
15 list is there were topics that we would want to ask them
16 about that were not on the city's list of topics for those
17 witnesses, you know, the DWSD, you know, type issues. I
18 suspect, your Honor, that, you know, if someone takes out all
19 the duplicate numbers, you know, of witnesses, you know --
20 and we have not, you know, calculated it exactly, but it's,
21 you know, much fewer than the total amount of witnesses that,
22 you know, have been, you know -- you know, discussed today.
23 It's in the nature of around 70 total witnesses, of which 37,
24 you know, are the witnesses of the -- you know, of the city.
25 You know, we were --

1 THE COURT: Actually, sir --

2 MR. BRILLIANT: -- working very hard with the --

3 THE COURT: Actually, sir, you're mistaken about
4 that.

5 MR. BRILLIANT: Okay.

6 THE COURT: Taking into account the fact that some
7 witnesses are listed on multiple lists, just counting the
8 number of witnesses, it's still between 160 and 200.

9 MR. BRILLIANT: I apologize if I'm wrong about that,
10 your Honor. That's not how we calculated it, but obviously
11 we must have missed some.

12 THE COURT: All right. Thank you, sir.

13 MR. BRILLIANT: Thank you, your Honor.

14 MR. DAVIDSON: Your Honor, Paul Davidson for U.S.
15 Bank. I just wanted to give you a preview of what we're
16 going to do for Wednesday in order to answer some of the
17 questions that you've asked today. What we have done is take
18 those document requests that we carefully prepared and have
19 since prioritized, and we've put those on a chart. We've
20 then put the city's response in terms of what they have told
21 us and identified that they have produced responsive to those
22 requests. We will then have on the chart where our experts
23 have told us they must have these documents and why they must
24 have these documents, and we will show the gaps in the city's
25 production, and the gaps will be visually available for you

1 to see, and we will explain why we need those documents.

2 And the last point on the trial schedule I would
3 make is that the experts have made it clear to us that they
4 will need at least two weeks after they receive the documents
5 that they have requested in order to help us prepare for the
6 depositions.

7 THE COURT: Okay. Thank you for that, sir.

8 MR. MARRIOTT: Good morning, your Honor. Vince
9 Marriott, Ballard Spahr, EEPK. I want to take it back out of
10 the weeds for a minute because --

11 THE COURT: Without repeating anything that anyone
12 has already said twice.

13 MR. MARRIOTT: That is precisely my objective is to
14 repeat none of this. I just want to go back to a point that
15 Mr. Hackney admittedly nodded to but I want to emphasize
16 because it focuses on the big picture, which I think gets
17 lost if we start arguing about whether this particular
18 document was responsive to this particular request. I mean
19 we'll have hearings for that purpose. This schedule is being
20 driven by a date which I think is entirely artificial, and
21 that's September 30. And the reason given for that date is
22 it's bad for the city to be in bankruptcy. It's not bad for
23 the city in the way, for example, it would be bad for a
24 corporation in Chapter 11. I mean 904 gives the city the
25 ability to operate normally. The Court has already approved

1 a DIP loan and a lighting loan so that the city can proceed
2 with the reinvestment initiatives before it gets out of the
3 case, so it's not as though the city is sitting in limbo
4 unable to do anything to better itself while the case is
5 pending.

6 What would be bad for the city is for this Court to
7 approve a plan that doesn't work. The plan confirmation
8 process is the only process by which this Court can be
9 educated about whether the plan works. The way that this
10 plan is structured, the city has one shot. Chapter 18 is not
11 going to really work if this plan is confirmed in part
12 because many of the largest assets of the case will have been
13 sold or otherwise dealt with and won't be available the next
14 time around, so there is a lot at stake in the approval of
15 this plan. And a process that does not allow a confirmation
16 hearing where issues are properly addressed is not simply
17 unfair to creditors, as has already been said by many, it's
18 unfair to the city because if you are forced to approve or
19 disapprove a plan without having it been properly litigated,
20 you may say "yes" to a plan that doesn't work. You might say
21 "no" to a plan that does. Neither makes sense. And so to
22 build the schedule around a date that really, really doesn't
23 matter is, in my view, not only a mistake for creditors, it
24 is a mistake for the city. Let's set this up in a way that
25 works, not in a way that is beholden to a date that is almost

1 entirely arbitrary. Thank you.

2 THE COURT: Thank you, sir.

3 MR. ALBERTS: Good morning, your Honor. Sam Alberts
4 on behalf of the official committee. Just two very quick
5 points. The first is we had not joined the pleading. We
6 were not a signatory to it. We feel that we are -- we have a
7 stipulation with the city which governs our discovery
8 concerns as well as other retirees, so we didn't feel the
9 need to join in this. The one thing I would like to add,
10 though, is that whatever the Court decides, particularly in
11 terms of document production, that it be done with the
12 thought of the last production which, unfortunately,
13 disclosed some settlement mediation communications, which was
14 very unfortunate because, in fact, the day after this Court
15 ruled that it be pulled back, there was a report in one of
16 the Detroit papers about sensitive mediation between the
17 committee and the city, which appears to have been planted
18 for either political gain or some sort of strategic gain, and
19 so we would caution that whatever is produced there be a
20 double-check if not triple-check on those documents that they
21 are not released in the future.

22 THE COURT: Who did that?

23 MR. ALBERTS: We don't know, your Honor. We have
24 not conducted discovery. We could surmise. We could guess.
25 I think the only way maybe the Court could ever find out is

1 ask people to verify that they did not release any documents
2 to the press, and if they did, what did they produce, but we
3 don't want to have it happen again. Thank you.

4 MR. GOLDBERG: Jerome Goldberg on behalf of
5 interested party, David Sole. I just wanted to assure the
6 Court that we have no intention of burdening the trial with
7 hundreds of witnesses, that we could easily pare our list
8 down to two or three. And, in fact, I will speak to Mr.
9 Shumaker. I mean Mr. Sole's interest -- if the retirees vote
10 in support of the plan, he will not really be calling any
11 witnesses, and I'll be glad to talk to him. I've read the
12 other stipulations, and we'll be glad to talk to Mr. Shumaker
13 about that to facilitate so there is no burden on our party's
14 case at all.

15 I just want to raise one brief question, and I hope
16 I'm not out of line. I know in the eligibility hearing the
17 Court gave many individual objectors who were not represented
18 a chance for a hearing, and I'm just wondering if the Court
19 is considering a similar process with regard to this. I know
20 many individuals have filed because they --

21 THE COURT: Yes.

22 MR. GOLDBERG: -- have tremendous concern.

23 THE COURT: The answer is yes.

24 MR. GOLDBERG: Okay.

25 THE COURT: We have received, I've been advised,

1 over 600 such objections.

2 MR. GOLDBERG: That's amazing, yeah.

3 THE COURT: And I can't accommodate the process that
4 would result from inviting 600 people, so we are engaged in a
5 process in our office to determine who to invite and to fix a
6 number and to set that up fairly soon.

7 MR. GOLDBERG: Okay. Thank you, your Honor. And
8 I'll be speaking to Mr. Shumaker to work out, you know, the
9 question that was raised.

10 THE COURT: Thank you.

11 MR. LEGGHIO: Good morning, your Honor. Christopher
12 Legghio. This is a non-DWSDS issue, so this is changing
13 gears. And I won't repeat anything that's been said. The
14 fire fighters filed some objections to the PA, and this
15 doesn't involve discovery. Our objections, we think, are
16 purely legal issues, and we think they lend themselves to
17 consideration of the Court before the POA trial, and we would
18 urge the Court that we have that opportunity.

19 THE COURT: So that would involve setting up, what,
20 a hearing date where you would argue your objections, and
21 then I would take the city's responses to that and then take
22 it under advisement?

23 MR. LEGGHIO: No, your Honor. I wouldn't -- I'm not
24 going to choreograph how the Court would handle that. You
25 could tell us that you want us to brief it and no oral

1 argument, any way the Court wants to do it, but we think it's
2 a purely legal issue. It's not an issue for trial.

3 THE COURT: So the objections that were filed were
4 not in the nature of a brief with legal argument in support
5 of them --

6 MR. LEGGHIO: There was --

7 THE COURT: -- or were they? You tell me.

8 MR. LEGGHIO: There was legal argument attached, not
9 a fulsome brief that you might get in a motion for summary
10 judgment, but there were other arguments attached. And I
11 think it is a purely legal --

12 THE COURT: All right. Well, let's hear what the
13 city has to say about that, and, you know, if --

14 MR. LEGGHIO: It's a --

15 THE COURT: I'm willing to accommodate, you know,
16 any kind of an efficiency that a party is interested in. It
17 doesn't make sense for you to have to sit through a trial,
18 however long it might be, if all you have are legal issues.

19 MR. LEGGHIO: Yes, your Honor. And let me be more
20 precise. The legal issue -- the discrete objection that I'm
21 speaking to that the fire fighters filed was a challenge to
22 the ten-year injunction on the future applicable pension plan
23 for police and fire. It's that issue we think lends itself
24 to a pure legal review.

25 THE COURT: Okay.

1 MR. LEGGHIO: Thank you, your Honor.

2 THE COURT: Thank you, sir. Ms. Patek, you've been
3 trying to speak.

4 MS. PATEK: Good morning, your Honor. Barbara Patek
5 again on behalf of the DPOA and the DFFA. Mr. Legghio
6 essentially covered the issue that I wanted to raise,
7 which --

8 THE COURT: Okay.

9 MS. PATEK: -- is a scheduling issue. We did raise
10 it with the city last night, and I just wanted to make the
11 Court aware of that.

12 THE COURT: Okay.

13 MR. FETTER: Your Honor, Robert Fetter of Miller
14 Cohen on behalf of AFSCME Locals 917 and 3308, who are the
15 representatives of the 36th District Court employees. We
16 have filed objections, and some of the individual members
17 have also filed objections regarding the inclusion of 36th
18 District Court in this bankruptcy. Frankly, to add an
19 independent third party into the bankruptcy, we had
20 anticipated some sort of motion to do that and that this
21 issue would be dealt on motion practice. Again, as the last
22 two attorneys had indicated, this issue is largely a legal
23 issue.

24 THE COURT: Um-hmm.

25 MR. FETTER: And it should be dealt with in the

1 motion practice.

2 THE COURT: Well, if that was so, I wondered why you
3 proposed to call so many witnesses, let alone any witnesses.

4 MR. FETTER: I did not propose to call any
5 witnesses. That was one of the individual's attorneys.

6 THE COURT: Then I apologize to you.

7 MR. FETTER: And I think that -- not to speak for
8 the --

9 THE COURT: All right. Well, have you discussed
10 with the city how most efficiently to process your issue
11 apart from the trial process?

12 MR. FETTER: Frankly, it's been very difficult to
13 get the attorneys representing the debtor to pay much
14 attention to this issue.

15 THE COURT: Okay.

16 MR. FETTER: There's been very little follow-through
17 on their part. Every time I try to contact them, they say
18 they'll get back to me, and --

19 THE COURT: And they haven't yet. All right.

20 MR. FETTER: Yes.

21 THE COURT: Well, now is the time.

22 MR. FETTER: I would agree. So we would ask for,
23 you know --

24 THE COURT: Yeah. What would you propose?

25 MR. FETTER: I would propose -- we did fully brief

1 the legal issues in the objections. Obviously we haven't
2 seen their response yet. There may be some documents,
3 exhibits, things like that, that we did not attach to the
4 objections that we would want to submit to the Court for
5 their review, so whether I need to brief it fully, I think it
6 would be repetitive to the objections, and I don't want to do
7 that.

8 THE COURT: No.

9 MR. FETTER: However, there would be -- there may be
10 some other things I would want to submit prior to oral
11 argument in documents, and one thing I can think of, we did
12 send out some interrogatories regarding the standards under
13 the Dow Corning case that they must meet to --

14 THE COURT: Right.

15 MR. FETTER: -- be able to join, and they've
16 admitted in the response to that interrogatory that many of
17 those they can't meet. And there may be some other smaller
18 documents that we did not attach to the objections because I
19 don't believe we attached any documents to the objections.

20 THE COURT: Um-hmm.

21 MR. FETTER: But outside of having some opportunity
22 to present those documents, I don't feel a need to brief it
23 further.

24 THE COURT: Okay.

25 MR. FETTER: Thank you, your Honor.

1 THE COURT: Well, let me just ask generally, not of
2 you, of the group, is there anyone else here who thinks that
3 your objections can be handled on purely a legal basis
4 outside of the fact-finding trial process? No response. All
5 right. Thank you, sir.

6 MR. FETTER: Thank you.

7 THE COURT: Would the city like a further
8 opportunity to be heard? Actually, I would appreciate it
9 because I have some questions for you.

10 MS. LENNOX: Good morning, your Honor. Heather
11 Lennox on behalf of the city. Some of the questions I may
12 have to defer to Mr. Shumaker and Mr. Irwin. I rise only to
13 deal with a couple of specific things that are perhaps a
14 little more bankruptcy related than litigation related,
15 although they kind of overlap. And perhaps it might be
16 easiest to take the last issues raised by Ms. Patek, Mr.
17 Legghio, and Mr. Fetter first.

18 First -- and I am not going to get into this on the
19 record, but I disagree with a lot of the representations that
20 Mr. Fetter made to you, but with respect to the pertinent
21 issue, which is should we have a separate hearing on legal
22 issues only to sort of get those out of the way or whatever,
23 that is, as your Honor recalls, certainly something that your
24 Honor proposed originally in the original scheduling order,
25 and the city did not have opposition to it. The city

1 continues not to have opposition to it with these
2 reservations. If we're going to do that kind of process, I
3 really think we need to do that kind of process for
4 everybody. The city -- given everything that the city has to
5 do, it would be difficult for us or perhaps prejudicial to us
6 to have to prepare for legal issues here and then a legal
7 issue here, and then we have more legal issues down the road,
8 particularly because some of these objectors raised the same
9 issues. For example, if Mr. Fetter wants to talk about
10 third-party releases, I got third-party release objections
11 from everyone, so are we going to argue that for everybody
12 that day?

13 THE COURT: Um-hmm.

14 MS. LENNOX: So as long as -- again, we don't have
15 an objection to the concept, but the concept has to be one
16 day for everyone, all issues, however your Honor wants to
17 decide that, so we can reasonably prepare to deal with that
18 bundle of issues.

19 THE COURT: So then in your proposal, would you
20 let -- how would it be determined which of the objectors'
21 objections are legal and not?

22 MS. LENNOX: Well, it would seem to me that if your
23 Honor wants to have a hearing early on legal issues, perhaps
24 those issues, those topics, can be described. For example,
25 if we're going to have an argument --

1 THE COURT: By whom, though? Who would make that
2 decision?

3 MS. LENNOX: I think that would be up to the Court.
4 You have two issues in front of you that people have
5 specifically requested, nobody else has requested. If your
6 Honor would like to do that, there are certain things that
7 probably do lead to pure legal discussion, third-party
8 releases, perhaps Mr. Legghio's and Ms. Patek's issue,
9 although they did suggest they were going to call witnesses,
10 but if they're not, we'll be happy to not have witnesses on
11 that. So we do -- we have gone through and summarized
12 obviously all of the objections. There are certain things
13 that certainly do lead themselves to legal argument. And if
14 your Honor is inclined to have those kinds of things done
15 early, I think it should be up to the Court. If your Honor
16 wants to invite people to submit issues to be decided in that
17 way so that people have --

18 THE COURT: I actually like that idea.

19 MS. LENNOX: -- um-hmm -- a fair opportunity to
20 present that to your Honor, the city is not opposed to that.

21 THE COURT: All right.

22 MS. LENNOX: We just want some kind of order. Okay.
23 The next thing that I rise to address -- and I am not going
24 repeat this stuff, but I've asked to simply because I've been
25 a little more in the weeds as things have gone on with

1 respect to the DWSD discovery, and I'm going to be very brief
2 in responding to what your Honor heard. And I'm very glad
3 that Mr. Neal -- I thought perhaps I was reading the
4 objections wrong when I kept seeing the difficulty we've been
5 having moving this process forward, but Mr. Neal agreed with
6 me. There are three issues that the bondholders have that
7 they're concerned about, the interest rate, the call
8 protection, and the payment of the DWSD UAL, and generally,
9 although this is really more the county's issue, the
10 feasibility of the -- not the city's business plan, the huge
11 business plan, the DWSD business plan, so let's talk about
12 those.

13 First, on the interest rate, the legal issue is are
14 we allowed to impose a market rate of interest? In large
15 measure, that's a legal issue that can be argued in cramdown
16 if we have to go to cramdown. We don't know if we have to go
17 to cramdown yet. And we have produced to them already the
18 interest rate reset charts and the documents supporting it
19 that we have from our expert witness. The call protection is
20 largely a legal issue. The DWSD payment of its own UAAL,
21 again, very minimal documents. We have established at a
22 hearing before your Honor before we were here that the actual
23 valuation reports where they allocate what DWSD and all that
24 stuff are produced by the systems. If we had them, we gave
25 them to them. They can get them from the system. Most of

1 them are online. So what they're looking for are the
2 documents that we've said they're going to be getting
3 tomorrow and next week, which are a minimal number of
4 documents from E&Y and Milliman to support the rest of that.

5 What's at stake on the bond side of it? And I'll
6 address the county separately. What's at stake on the bond
7 side of it when you deal with this is, first of all, of the
8 \$6 billion of debt, over half of that is unimpaired under the
9 plan, so the debt --

10 THE COURT: Define "unimpaired."

11 MS. LENNOX: Meaning we're reinstating the debt as
12 it stands today.

13 THE COURT: With no interest rate adjustment and
14 no --

15 MS. LENNOX: No.

16 THE COURT: -- call protection changes?

17 MS. LENNOX: Exactly. So less than half of it is
18 what we're talking about. When we apply what we think might
19 be the interest rate modifications to this, we think the
20 actual impact to the DWSD bondholders is less than half of
21 what Mr. Neal estimated.

22 THE COURT: 400 million instead of 800 million?

23 MS. LENNOX: Or less.

24 THE COURT: Or less.

25 MS. LENNOX: Yes. So not that that's not a big

1 number, but in the grand scheme of things and what we're
2 talking about, particularly when we're still talking about a
3 hundred percent payment of principal, were limited to -- were
4 very limited issues here, your Honor. We have already
5 committed to and are in the process of doing the three ESI
6 searches.

7 THE COURT: Mr. Neal says that the interest rate
8 adjustment is a complex issue because it involves a wide
9 range of considerations that the market would look at.

10 MS. LENNOX: And that would all be the purview of
11 expert testimony. I mean I'm not sure, frankly, your Honor,
12 what the -- you know, the head of the water -- the head of
13 the water operations is going to have on this issue.

14 THE COURT: Well, he would argue and did argue that
15 what that particular witness might have, for example, would
16 include information about the condition of the system, the
17 capital expenditures required for the system, which arguably
18 would impact, in the market's view, what an appropriate
19 market rate of interest is for the outstanding debt.

20 MS. LENNOX: What I think the market would look at
21 is the ability to generate revenue and cash flow when they're
22 looking at a pure financial analysis, and I will get to that
23 in a minute because that was really more the county's issue.

24 THE COURT: I'm not sure that was more the county's
25 issue.

1 MS. LENNOX: Well, regardless, your Honor --

2 THE COURT: I heard Mr. Neal say it's an issue that
3 he will argue goes to interest rate. Am I right, Mr. Neal?

4 MR. NEAL: You're doing a very good job, your Honor,
5 so I'll let you continue.

6 MS. LENNOX: So, again, your Honor, we have not said
7 to them we've given you everything we're --

8 THE COURT: Hold on.

9 MS. LENNOX: -- going to give you, and I'm not
10 giving you any more.

11 THE COURT: Hold on. I'm not conceding you
12 anything, sir.

13 MR. NEAL: No. I recognize as much, but you flagged
14 the issues that I raised in my opening presentation.

15 THE COURT: All right. That's as far as -- that's
16 as far as that went.

17 MR. NEAL: Can I just make one -- this will help, I
18 think, Ms. Lennox's point if I can just make one additional
19 point. I recognize the 400 million calculation of
20 Ms. Lennox. I was adding on top of it the 430 million that
21 they're trying to subordinate us to. That's how I arrived at
22 my rough justice 800 million. Thank you.

23 MS. LENNOX: Well, we'll take issue with that, but
24 that's for another day. That's not today. So, again, with
25 respect to the production, while we've given them 5,000

1 documents from all city custodians, we haven't said, "But
2 that's all you're getting." I mean Mr. Irwin and Mr.
3 Shumaker went through chapter and verse. I'm not going to
4 repeat what they're getting and when they're getting it, but
5 basically by the end of next week, they're pretty much going
6 to have everything that's relevant.

7 With respect to feasibility and a lot of the things
8 that you say may go into interest rates, in the -- no, no,
9 no -- that Mr. Neal said might go into interest rates --

10 THE COURT: Thank you.

11 MS. LENNOX: Let me correct that. Let me explain
12 what they have. They have historical financials back to
13 2008. They have operating expenditures back to 2009. They
14 have the DWSD business plan, and they have the Conway
15 MacKenzie model underlying the business plan. I mean that's
16 pretty extensive financial documentation that they can start
17 working with right now when it comes to that kind of stuff,
18 and to go to the condition of the system, they have the ten-
19 year capital improvement plan. You can't put together a
20 capital improvement plan for the next ten years without first
21 doing an assessment of the system as it exists today.

22 THE COURT: And do they have the documents --

23 MS. LENNOX: Yes, they do.

24 THE COURT: -- that --

25 MS. LENNOX: They have that document.

1 THE COURT: They have that document, but my question
2 was do they have the documents on which the authors of that
3 report or that assessment relied when they made that
4 assessment?

5 MS. LENNOX: Yeah. Your Honor, I do not know that
6 standing here, but, again, we have conceded we are doing full
7 ESI searches of all the big dogs at DWSD, and we will search
8 that database.

9 So when we're talking about the three issues -- and
10 feasibility, of course, what does the business plan do and
11 what does it say, that is clearly the most fact-intensive
12 issue. Interest rates, arguably not. Call protections,
13 legal. DWSD, UAL, limited set of documents. By next week,
14 they'll have everything. What else is there? Your Honor,
15 Mr. Neal works for a really big firm, Sidley Austin. The
16 other objectors have really big firms, Chadbourne & Parke,
17 Kramer Levin, Mintz Levin, Waller Dortch, Mr. Brilliant's
18 firm, Dechert. They have one opponent, the city. They have
19 three, maybe four, discrete issues, all of which are largely
20 legal. I think these firms are up to the task of dealing
21 with it in the time that your Honor has allotted.

22 Again, I would also say, your Honor, that no matter
23 how you look at what we're trying to do here in streamlining
24 everything, there are clearly going to be a lot of witnesses
25 at trial. There's no reason that the non-DWSD witnesses

1 can't go first and the DWSD witnesses come toward the back of
2 that deposition pack so people will have more time if they
3 feel they need it to digest whatever it is that they're
4 getting that they don't have.

5 With the two -- with respect to the two things that
6 Ms. Quadrozzi raised, again, I think we've talked about the
7 condition of the system. We've talked about the fact that
8 we're still searching the top people. But with respect to
9 some of the -- and I will get back to where Mr. Irwin was
10 going with how many people do we have to search and how
11 long -- and how far down the food chain are you going here in
12 terms of cost-benefit analysis. I'm not sure how the head of
13 security or the IT officer or two people who are identified
14 to us that didn't even have titles are going to help that
15 process, so if there are one or two more that people think
16 are particularly relevant, we're happy to -- again, we're
17 happy to do it. We're certainly happy to do whatever the
18 Court tells us we have to do, but we need to be reasonable
19 about this in light of what's at stake here.

20 Now, let me tell you what's at stake with the
21 counties. The counties have contracts with us for us to
22 provide sewerage and water services to them. We've already
23 told them we're assuming their contracts. I'm not sure
24 really --

25 THE COURT: Well, but they're entitled to your proof

1 of the city's ability to perform under the contract under
2 Section 365.

3 MS. LENNOX: Absolutely. And they are getting that
4 in terms of all of the feasibility documents that we've
5 already provided and in terms of the business plan, the
6 model, the capital improvement program, and in light of what
7 are the alternatives. The system is what it is. The system
8 is an old system. The system is in need of a lot of
9 upgrading. There's a plan to do it, a reasonable plan to do
10 it over time that won't cause the rates for people to
11 skyrocket, and your Honor will be hearing all about that in a
12 few months.

13 THE COURT: I appreciate your advocacy on that, but
14 they're entitled to see the evidence that you have of the
15 reasonableness of the plan and --

16 MS. LENNOX: No question.

17 THE COURT: -- to test it.

18 MS. LENNOX: No question, your Honor. All we're
19 saying is they have a really lot of stuff that they can and
20 should start working with. We've already told them they're
21 going to be getting more stuff, and all we're asking is to
22 say, look, in light of all of that and in light of what your
23 issues really are, let's be reasonable about limiting what
24 more we're going to do here in light of the cost-benefit to
25 people, the process, and the city, so I am --

1 THE COURT: All right. Well, at a minimum, today is
2 not the day to decide issues of document production, but I
3 would encourage you to provide the underlying and backup
4 documents that went into the longer range capital improvement
5 program for the water system.

6 MS. LENNOX: Certainly, your Honor. And with that,
7 I'm going to turn the podium back over to my --

8 THE COURT: And I would encourage you between now
9 and next Wednesday to continue the process you've been
10 engaged in vigorously, your meet and confers with the
11 counties, to -- the other parties, for that matter, to narrow
12 your differences.

13 MS. LENNOX: Absolutely, your Honor. We commit
14 to -- we commit to do that.

15 THE COURT: All right.

16 MS. LENNOX: And I will turn this back over to Mr.
17 Irwin and Mr. Shumaker. If there's anything further you
18 need --

19 THE COURT: Okay. Thank you.

20 MS. LENNOX: Thank you.

21 THE COURT: Mr. Hackney argues with much vigor and
22 some force that we should have a more in-depth discussion
23 among all counsel as to what the issues are in an effort to
24 focus and limit discovery and witnesses. What do you think
25 of that idea?

1 MR. SHUMAKER: Well, I certainly think it would be a
2 good idea, to the extent it's going to limit discovery and
3 witnesses, and the city is open to that, your Honor, if
4 that's what you think is appropriate. I mean we do have a
5 plan which we're litigating and we're going to be proving
6 that that's --

7 THE COURT: I don't want to put you to having to
8 make an opening statement, but it does strike me that
9 Mr. Hackney's approach has some merit. Would you be prepared
10 to do that by next Wednesday?

11 MR. SHUMAKER: I guess my question would be what is
12 "that"? Certainly, we'd be happy to have a discussion with
13 your --

14 THE COURT: Well, it's a fair question. Let me try
15 to answer it at least at the level I think would be helpful
16 and appropriate.

17 MR. SHUMAKER: Certainly.

18 THE COURT: It would involve your reviewing more
19 than superficially, although not at the opening statement
20 level, the kinds of evidence you intend to put forward on the
21 elements of confirmation that have been objected to one by
22 one.

23 MR. SHUMAKER: So it would be a breakdown of the
24 city's affirmative case? Is that what we're thinking about?

25 THE COURT: You could phrase it generally that way.

1 MR. SHUMAKER: Yeah. In terms of which witnesses
2 and which --

3 THE COURT: I wouldn't do it witness by witness. I
4 would do it issue or element by issue or element, so, for
5 example, on the issue of unfair discrimination, here's who we
6 intend to call, and here's what we expect them to testify.
7 And I would expect that what follows would be more than just
8 the plan isn't -- doesn't unfairly discriminate or is fair
9 and equitable, not much more but some more.

10 MR. SHUMAKER: Yeah. Certainly, your Honor, I mean
11 in terms of fleshing --

12 THE COURT: With the understanding that you're going
13 to be as complete as you can be, but it's not for the purpose
14 of limiting you in any sense.

15 MR. SHUMAKER: Right. Just having an open
16 discussion about different aspects of the city's case. You
17 know, I think that that might well be helpful to your Honor
18 and to the parties. I just am a little bit concerned as to
19 whether we could do that by Wednesday. I mean we're going to
20 have to make some --

21 THE COURT: I only suggested Wednesday because you
22 want to start trial on July 24th.

23 MR. SHUMAKER: I understand that, your Honor, and
24 I'm not trying to --

25 THE COURT: There's still an open question here;

1 right?

2 MR. SHUMAKER: I'm not trying to slow it down, but
3 perhaps, you know --

4 THE COURT: At the same time, Mr. Hackney, let me
5 ask you to rise in response to this question now.

6 MR. HACKNEY: Yes.

7 THE COURT: If we're doing this for the city,
8 doesn't it snow, as we say here in Michigan, on both sides of
9 the fence?

10 MR. HACKNEY: I think it does. I think sauce for
11 the goose is sauce for the gander, which I think they say in
12 Michigan as well.

13 THE COURT: Well, I don't know about that because
14 I'm a vegetarian.

15 MR. HACKNEY: Oh, I've stuck my foot in my mouth
16 again, but I'm also from Michigan, so -- but the only thing I
17 was thinking -- I actually had thought about that, but I
18 think it's fair to ask creditors to start to articulate their
19 view. There is a bit of a staging concept perhaps maybe
20 because you might want to first get a picture of the city and
21 then think about it, but I will represent to the Court for
22 what it's worth that I would be willing to try and do that
23 real time if we're together next Wednesday, so if you'd give
24 me an hour and a half or something to go collect myself after
25 the city has given us some clarity, I would come back in the

1 afternoon and tell you here's how I see that setting up.

2 MR. SHUMAKER: That's fine, your Honor. Wednesday
3 would be fine.

4 THE COURT: All right. Well, let me see if I can
5 put together an order that will more specifically articulate
6 what everyone's obligations would be in this process.

7 MR. SHUMAKER: Terrific.

8 THE COURT: What else did you want to address?

9 MR. SHUMAKER: I just -- you know, I don't want to
10 duplicate anything, and one thing that I've learned in
11 representing the debtor in this case is that you've got to
12 have a real thick skin, so I'm not even going to respond to
13 the --

14 THE COURT: Okay.

15 MR. SHUMAKER: -- suggestion that the city's counsel
16 is --

17 THE COURT: All right. But you have to -- you have
18 to address this because it has been challenged here today,
19 and it's what more is there to the urgency of starting on
20 July 24th and concluding by September 30th than it's not good
21 for the city to be in bankruptcy?

22 MR. SHUMAKER: Well, it's, you know, the uncertainty
23 of what your Honor has intimated at, you know. When the
24 emergency manager steps aside, the uncertainty that that will
25 provoke for the city could be dramatic. We have not, as I

1 said, talked to the mayor about that issue or to City Council
2 about that issue, but if --

3 THE COURT: I'm a little surprised at that.

4 MR. SHUMAKER: Well, your Honor, we haven't, and we
5 can, but -- and I hear what you're saying, your Honor, but
6 that's -- that is a -- one of the -- obviously the biggest
7 issue, and we certainly don't want to get in a situation
8 where the city is prejudiced because this --

9 THE COURT: But let me ask this question of you. Is
10 that circumstance that state law set up cause to set up a
11 schedule more expedited than might otherwise be justified?

12 MR. SHUMAKER: Again, your Honor, for the reasons
13 that I said, the answer, I think, to that is yes. I think
14 that from the city's standpoint getting this done by the end
15 of September is important.

16 THE COURT: Okay. Anything else you want to
17 address?

18 MR. SHUMAKER: Everything else -- some of the cracks
19 about Mr. Hertzberg I think we should just let lie. He was
20 trying to be cooperative, but that's for another time. Thank
21 you, your Honor.

22 THE COURT: Mr. Irwin, is there anything you wanted
23 to say?

24 MR. IRWIN: No, your Honor.

25 THE COURT: Ms. Patek has something she'd like to

1 add here.

2 MS. PATEK: Your Honor, I just want to respond to
3 Ms. Lennox's comments with respect to our issue in the
4 bankruptcy context because unlike some of the other
5 creditors, you know, taking on Mr. Hackney's theme of getting
6 an unconfirmable plan unconfirmed as soon as possible, we'd
7 like to see the city go into confirmation with a confirmable
8 plan, and the issue that's raised by Mr. Legghio and that
9 he's taking the lead on is a discrete legal issue. Their
10 response, the city, will be filed on Tuesday, and so we just
11 don't want that to get lost in the weeds.

12 THE COURT: Right. I got that.

13 MR. ALBERTS: Your Honor, just very quickly, Sam
14 Alberts on behalf of the Retiree Committee. Whatever the
15 Court decides, obviously for next Wednesday we will live
16 with. We just want to remind the Court that we are still
17 somewhat schizophrenic in that your --

18 THE COURT: Right. I know.

19 MR. ALBERTS: Yeah.

20 THE COURT: It's complex.

21 MR. ALBERTS: So we would not like to be in a
22 position where we would have to put forward our case because,
23 quite frankly, we don't know what our case is going to be on
24 confirmation. We're hoping we're in support.

25 THE COURT: Right; right.

1 MR. ALBERTS: Thank you.

2 THE COURT: Thank you for reminding me of that. All
3 right. I'm going to take a recess in our status conference
4 here right now and ask your patience for 15 or 20 minutes
5 while I contemplate whether there's any further guidance I
6 want to give you here today or simply adjourn this matter and
7 whatever else is set for next Wednesday, so it's 12:20 or so.
8 We'll reconvene at 12 -- excuse me -- 12:40.

9 THE CLERK: All rise. Court is in recess.

10 (Recess at 12:22 p.m., until 12:41 p.m.)

11 THE CLERK: All rise. Court is in session. Please
12 be seated. Recalling Case Number 13-53846, City of Detroit,
13 Michigan.

14 THE COURT: Thank you again, counsel, for your
15 efforts in articulating ways to streamline this process. I
16 appreciate it very much. At this point in our process, I'm
17 going to do two things. I'm going to articulate in a filing
18 a procedure for attempting to carve out legal issues with
19 your input, and I'm going to articulate a process through
20 which we can get a disclosure not only from the city but from
21 objecting parties, a disclosure of the evidence, witnesses
22 and documents, on each of the contested elements of
23 confirmation. I'll try to articulate as best I can the
24 extent of the disclosure that I want or that I think would be
25 helpful in our process. It has to be more than superficial,

1 but, as I said before, I don't want opening statements, so
2 something in between. I'll see if I can articulate that.

3 That's as much as I want to do in regard to this
4 portion of the status conference now. I do want to take a
5 lunch break now and reconvene after lunch to go through with
6 the city and anyone else who's interested the list that I
7 mentioned the last time and perhaps even the time before that
8 of my questions or points of ambiguity regarding the plan,
9 and I'd like to do that after lunch today at two o'clock, so
10 obviously I need someone from the city to work with me on
11 that. Others of you are welcome to stay and listen, but I
12 certainly would not require it of you. I don't expect
13 anything from you in regard to this process, so it's really
14 up to you whether you stay and listen in or not, so I will
15 see you back at two o'clock, please.

16 THE CLERK: All rise. Court is in recess.

17 (Recess at 12:44 p.m., until 2:00 p.m.)

18 THE CLERK: All rise. Court is in session. Please
19 be seated. Recalling Case 13-53846, City of Detroit,
20 Michigan.

21 THE COURT: Okay. Give me a moment to get organized
22 here, please. Okay. Do you have a copy of the most recent
23 plan there with you?

24 MS. LENNOX: Yes, your Honor.

25 MR. BENNETT: Yes, your Honor.

1 THE COURT: Okay. Okay. So I will be referring to
2 the actual page numbers on the plan, not the ECF page number.
3 So, again, just to reiterate our ground rules, these are
4 areas that I perceive of as being ambiguous or about which I
5 have questions. These are not Judge Rhodes' objections. I
6 don't expect or even want an answer to any of these questions
7 now. This is for you to consider, please, and decide if you
8 want to insert in your next version of the plan language to
9 address the question or to make it clearer. Okay.

10 So we'll begin on page 2 with the definition of
11 "administrative claim." I think we may have had a brief
12 colloquy about this before. The language is broad enough to
13 include or arguably broad enough to include every debt that
14 the city has incurred while the case was pending. It may, on
15 the other hand, be your intent that administrative claims
16 only cover those claims that arise in connection with the
17 prosecution of the case or you may have some other definition
18 in mind, so think about what you want to do with that.

19 Oh, I mentioned this before, but I'm going to
20 mention it again. It would be my request and suggestion that
21 you remove the phrase "and/or" in all of the numerous,
22 numerous places that it appears. It strikes me that every
23 time you use it, you mean "or." If you want to clarify in
24 your list of definitions that "or" includes "and," you can do
25 that, but "and/or" has, in my view, no place in the English

1 language. Okay.

2 Next one is on page 5, please. Paragraph 47
3 suggests a year to object to claims. My question would be
4 why you need a year, and if that period isn't shorter at
5 confirmation, we may need to have a conversation about that.

6 I was, frankly -- well, okay. Page 14, please. My
7 apologies. Page 10, paragraph 123, effective date, business
8 day as determined by the city on which each applicable
9 condition contained in Section 3-A has been satisfied or
10 waived. It might be good to think about putting in some
11 provision to give notice of the effective date, notice that
12 the effective date has been determined or something like
13 that.

14 MR. BENNETT: Your Honor, would that be a
15 prospective notice or a notice after it has occurred? Is
16 it --

17 THE COURT: Well, think about whatever makes sense
18 to you.

19 MR. BENNETT: Okay.

20 THE COURT: I have no more thought than that people
21 should be advised that the city is taking the position that
22 the plan is effective --

23 MR. BENNETT: Okay.

24 THE COURT: -- or is going to be effective or was
25 effective at some point in time, but --

1 MR. BENNETT: Okay.

2 THE COURT: -- it feels like people should know
3 that. Okay. Now page 14, paragraph 166. I was confused by
4 the definition of "indirect 36th District Court claim." Now,
5 likely this will all get thrashed out in connection with your
6 legal arguments on that issue, so let me not say anything
7 more about it.

8 Page 14, definition of "liquidity event." Oh, yes.
9 This was a doozy. I could not figure this out at all,
10 especially the language that began "and failing that, comma,
11 as soon thereafter as possible, comma, but notwithstanding
12 such compliance, comma." You need to unpack that for me,
13 please.

14 MR. BENNETT: Okay. Your Honor, because this
15 language was -- I'm sure looks this way because it was
16 negotiated heavily, I think I'll do that after consultation
17 with the different parties.

18 THE COURT: Whatever you need to do. I just need to
19 be able to understand it, and I've tried. Okay. Page 18,
20 paragraph 219, definition of "post-petition purchaser
21 claims," I couldn't understand what the word "purchaser" in
22 that defined term was intended to signify, so you'll have to
23 explain that to me at some point.

24 MR. BENNETT: I think it's just a post-petition
25 financing claim, and --

1 MS. LENNOX: It's a lender claim.

2 MR. BENNETT: Yeah.

3 MS. LENNOX: They call themselves purchasers.

4 THE COURT: Okay.

5 MS. LENNOX: We can clarify that, your Honor.

6 THE COURT: Please. If all it needs to have added
7 to it is we call them purchaser claims because that's how
8 they call themselves, that's fine.

9 Page 19, paragraph 230, definition of "restoration
10 trust." I may have missed it, but normally a trust has a
11 trustee and somebody who appoints the trustee, and there are
12 terms of a trust. And I didn't see any of that in the plan
13 or any of the attachments to the plan. Like I say, I may
14 have missed it, but if it's not in the package somewhere,
15 some definition of all of that needs to be included.

16 Page 23, please. One second. I don't have it. I
17 don't have the page right. Okay. It's not 23. It's 25
18 talking about bar dates for administrative claims, so it's
19 (a) (2) (A), general bar date provisions. This suggests
20 procedures will be specified in the confirmation order. It
21 would be nice to give notice to the Court and to the parties
22 of what procedures you have in mind before you actually
23 submit a confirmation order if it ever comes to that.

24 MR. BENNETT: Your Honor, it's here that I would
25 contemplate carving out ordinary course claims so that there

1 won't be a bar date requirement for them, and that would also
2 have the effect of curing the issue with respect to the
3 definition.

4 THE COURT: Okay. But we've got to tell people that
5 ordinary course claims are not included here. Otherwise
6 you're going to get a flood of them or at least you might.

7 MR. BENNETT: Right.

8 THE COURT: And we don't want that.

9 MR. BENNETT: We'll figure out a way to get that
10 into the record early.

11 THE COURT: It also strikes me that within 30 days
12 after the effective date may be a little bit short,
13 especially if it takes several days after the effective date
14 to give people notice that there was an effective date, and I
15 have to ask if you were planning on giving people who might
16 be subject to this paragraph notice of the bar date other
17 than what appears in the plan.

18 MS. LENNOX: Normally what we do, your Honor, is
19 file and publish and serve on all the creditors a notice of
20 effective date, which would include this bar date.

21 THE COURT: If that's included in your procedures,
22 okay.

23 MS. LENNOX: Okay.

24 THE COURT: Okay. Now page 30, please. One second.
25 One more second, please. Okay. In the last paragraph under

1 assignment on page 30, try as I might, I could not understand
2 how that was supposed to work, so I will have to ask you to
3 clarify that for me at some point in time or amend it so that
4 it's clear as to what it's intended to accomplish.

5 Page 31, under subparagraph 2, distributions from
6 the disputed COPs claims reserve, there's a reference in the
7 middle of the paragraph to the costs, fees, and expenses
8 related to the COP litigation incurred from and after the
9 effective date, and so it just needs to specify costs, fees,
10 and expenses incurred by whom.

11 Page 32, first paragraph, contribution to PFRS, in
12 the middle there it says, "The city will contribute
13 sufficient funds required to pay each holder," et cetera. It
14 leaves open, however, who will determine what this sufficient
15 contribution is and what will happen if there is a dispute
16 about that amount, and then the same question on page 33 in
17 regard to the contribution to the GRS.

18 Page 33, under "contributions to GRS," about two-
19 thirds of the way down the page under "treatment" the
20 language states, "The exclusive sources for such
21 contributions shall be certain city sources." That's pretty
22 open. Do you want to specify it any more particularly?

23 Page 34, ASF current participants under D-1, at the
24 beginning it says, "The annuity savings fund excess amount
25 will be calculated." Again, because it's in the passive

1 voice, we don't know who's going to do that calculation and
2 who will do the deductions or how that will be accomplished.
3 Under paragraph 2 right below that, there is the phrase --
4 well, in the middle there it says, "Based on each ASF
5 distribution recipient's life expectancy and other factors."
6 Again, that's broad and vague, and you might want to clarify
7 more specifically what those factors are.

8 Page 37, please. Again, there's a contemplation
9 here that at a later date the procedures for providing notice
10 to each party whose executory contract or unexpired lease is
11 being assumed pursuant to the plan will be established. I
12 would suggest that the sooner you can suggest those
13 procedures the better.

14 Page 38 at the bottom, rejection, damages, bar date,
15 there's a deadline there of 30 days after the effective date,
16 which, of course, if that's what you want to stick to, we
17 have to give creditors notice of the effective date and
18 notice of the bar date.

19 Page 39, I actually was not sure what that very
20 first sentence means, "Rejection of any executory contract or
21 unexpired lease pursuant to the plan or otherwise shall not
22 constitute a termination of a preexisting obligation owed to
23 the city under such contract or lease," so I would have to
24 ask you to explain to me at some point or give me an example
25 of how that might work in a real world situation.

1 Page 39 again talks about the city determining that
2 the conditions have been satisfied or waived regarding
3 effective date. My question there is what if there is a
4 dispute about whether any of the conditions have been met or
5 not? Do we want to establish a procedure for the prompt
6 resolution of that dispute?

7 Next, page 40, if I'm reading this correctly, it has
8 the following impact. If the city determines that the
9 effective date -- if the conditions for the effective date
10 are not satisfied, the Court is required to vacate the
11 confirmation order. I guess I would say that doesn't quite
12 feel right to me, especially if there's a dispute about
13 whether the conditions have been met and the Court determines
14 that they have. In the next paragraph relating to
15 dissolution of the Retiree Committee, at the end it says,
16 "All disputes relating to the approval of fees and expenses
17 shall be determined by the Bankruptcy Court," and the next
18 sentence says no appeal. That doesn't feel right to me
19 either. I'm not sure a plan of confirmation can -- a plan of
20 adjustment and an order confirming a plan of adjustment can
21 foreclose appellate rights like that.

22 Okay. Page 40. Well, wait. That's not right.
23 Hold on one second. It's page 41, discharge of claims. My
24 question there would be is there anything about this language
25 that's different from, broader than or less broad than the

1 discharge provided in the Bankruptcy Code or even more
2 fundamentally whether the plan shouldn't just say that the
3 claims that the Bankruptcy Code says discharged are
4 discharged?

5 Page 41, which is where we are, I'm confused about
6 this concept of indirect employee indemnity claims. The
7 subject is dealt with here and then again later, and I
8 couldn't figure out how they work together.

9 Page 46, conditions to state's participation, it
10 might be worthwhile to have the plan require either the city
11 or the state or somebody to again give notice that these
12 conditions have been met when they have. Beyond that, I
13 would have the following comments on the individual
14 paragraphs, and I hope this doesn't create too much of an
15 issue in your negotiations with the parties, let alone the
16 state, because I know the Michigan House is now considering
17 the bills. Let me just break my earlier rule and ask you if
18 "F" is intended to require the cessation of litigation in
19 which the City of Detroit or its emergency manager is not at
20 issue.

21 MS. LENNOX: It is not, your Honor.

22 THE COURT: Beyond that, paragraphs I, J, K, and L
23 use the word "assurances," and I think it should be
24 clarified. Assurances by whom?

25 Page 47, paragraph 3, conditions to the foundations'

1 participation, "E," the existence of appropriate governance
2 and oversight structures. What does "appropriate" mean? Who
3 decides whether the governance and oversight structures are
4 appropriate? Same in "F." And in "H" the affirmation by
5 county authorities of certain existing funding obligations
6 with respect to DIA Corp., what certain existing funding
7 obligations do those refer to?

8 Page 49, professional fee reserve. My only question
9 there is what about fees incurred after the effective date?
10 Maybe they'll just be paid in the ordinary course, but you
11 should deal with that one way or the other. And who is going
12 to calculate the amount of the reserve and how will it be
13 calculated? On that same page in paragraph "M" in the fifth
14 line there's the parenthetical "consistent with the
15 injunction provisions of Section 3(d)(5)." I wasn't sure
16 what that meant or how that worked in relation to that other
17 paragraph.

18 Page 51, "U" at the top, post-effective date
19 governance. I know this is covered in the state legislation
20 in great detail, and so I'm wondering if the plan shouldn't
21 just say the city will be subject to post-effective date
22 governance as established by the state. The way this reads,
23 it says, "A financial oversight board shall be established."
24 If this plan is confirmed, of course, that becomes the
25 federal court telling the city it's got to establish this

1 financial oversight board, and it's really the state that's
2 doing it, and I think, as a matter of comity between the
3 federal government and the state government, this should
4 be -- this should be clarified.

5 Page 55 -- excuse me -- fifth line under "tort
6 claims," it says -- well, beginning on the fourth line --
7 well, the fifth line, "In an administrative or judicial
8 tribunal of appropriate jurisdiction selected by the city."
9 That feels a little odd to me because normally the selection
10 of the appropriate jurisdiction in the first instance is made
11 by the claimant themselves subject to venue and jurisdiction,
12 of course. This sort of reverses that. At the end of that
13 same paragraph, it says, "If the city does not serve such
14 notice upon the holder of a tort claim by the claims
15 objection bar date, such holder may file a motion," et
16 cetera. Two things about that. The first is I wonder if we
17 should give these kinds of claimants notice at the
18 appropriate time of their right to file this kind of motion,
19 and, second, I wonder if we should set a deadline for the
20 filing of these kinds of motions so it isn't held open like
21 forever.

22 Page 56, application of bankruptcy rules, this
23 sentence would suspend a bankruptcy rule, and I'm not sure I
24 have the authority to do that.

25 Page 57, retention of jurisdiction, "B,"

1 jurisdiction to enforce the term, paren, maturity, close
2 paren, of the collective bargaining agreements. I think I
3 have an idea what that means, but I would ask you to spell it
4 out much more clearly and spell it out in a way that doesn't
5 infringe on whatever jurisdiction exists in -- under state
6 law in any court or administrative tribunal over interpreting
7 collective bargaining agreements.

8 Page 58, this is Article VIII, paragraph C,
9 disclosure of amounts to be paid for Chapter 9 case services.
10 "The city shall file a statement of all amounts to be paid,"
11 so the question is is this just the outstanding fee
12 obligations, or is it all of the fees that have been paid in
13 the case? It's a little bit vague because Section 943, when
14 it gives the Court the authority to determine the
15 reasonableness of fees to be paid, it's a little bit vague
16 there, too, so I'd ask you to clarify what your intent is
17 here.

18 Okay. So that's it in the plan itself, but I had a
19 very few questions regarding the attachments, and here we
20 will have to refer to the ECF page, so I'll do the best I can
21 to describe it to you. Okay. It's ECF page 131, but it's
22 page 14 of the DIA settlement terms. Page 14 of the DIA
23 settlement terms. Do you have that with you?

24 MS. LENNOX: Yes, sir.

25 THE COURT: Okay. At the top there, Bankruptcy

1 Court approval process, basically says, the settlement
2 between the city and the DIA is subject to Bankruptcy Court
3 approval in a manner acceptable to the parties, which the
4 city shall seek promptly after the signing of the definitive
5 documentation for the settlement, so it would be good if that
6 paragraph or someplace it described more particularly what
7 form that request for approval will take. Will it be in the
8 plan? Will it be by separate motion and when?

9 Now, ECF page 256, which is page 6 of the form of
10 state contribution agreement, paragraph 6 talks about default
11 by GRS and PFRS and remedies, and I couldn't quite figure out
12 what would constitute a default by GRS or PFRS. It talks
13 about they'll be in default if the system hasn't complied
14 with any of the conditions set forth in the plan, but, you
15 know, at some point perhaps you could explain to me one or
16 two examples of what that might constitute. And then,
17 frankly, I couldn't understand if there was a default and it
18 was determined exactly what the effect of the default would
19 be.

20 ECF page 260, which is Exhibit A to the state
21 contribution agreement -- one second. Actually, the piece I
22 want to ask about is on the next page, 261. This language
23 suggests circumstances in which the initial members of the
24 investment committee would be appointed by the Bankruptcy
25 Court in the first full paragraph there. The language of the

1 second full paragraph seems to suggest that the Bankruptcy
2 Court would then also appoint the successor independent
3 members or it could be read that way, so, again, I would ask
4 you to clarify what your intent is there. I would hope you
5 could figure out a way to establish these appointment
6 processes such that the Bankruptcy Court doesn't have to be
7 involved in this after some point in time.

8 MS. LENNOX: That's been further discussion on that
9 already, your Honor.

10 THE COURT: Good. Okay. That was all I had about
11 the language itself. There is the other open issue which
12 I've asked you to think about, which is I think it would be
13 appropriate, perhaps even simply in the order confirming the
14 plan rather than in the plan, to have an independent person
15 whose responsibility it is to report to the Court regarding
16 the city's compliance with the plan. That's it.

17 MS. LENNOX: Your Honor --

18 THE COURT: Yes.

19 MS. LENNOX: -- may I ask a question as to that last
20 issue? That is something that we have given quite a bit of
21 thought to, and we've developed very specific ideas with
22 respect to that. Would your Honor prefer to see that in a
23 new version or the next version of the plan, or is that
24 something that you would prefer to see in a proposed
25 confirmation order?

1 THE COURT: Well, since we're all likely to see the
2 next version of the plan before we see a confirmation order,
3 I think, you know, the sooner we can start to deal with it,
4 the better. Other than that, I don't really have any strong
5 views about it.

6 MS. LENNOX: Thank you, your Honor.

7 THE COURT: Would anyone else like to bring up
8 anything here today? No? All right. We are in recess, and
9 I will see you all next Wednesday.

10 THE CLERK: All rise. Court is adjourned.

11 (Proceedings concluded at 2:43 p.m.)

INDEX

WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

May 27, 2014

Lois Garrett